

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - - x

DAVID VANN,

Plaintiff,

-against-

THE CITY OF ROCHESTER, et al,

Defendant.

- - - - - x

Video Conference

March 24, 2022

10:33 a.m.

EXAMINATION BEFORE TRIAL of TOMESHA
ANGELO, a Defendant in the above-entitled action,
taken by the Defendant, held at the above
time and place, pursuant to Court Order,
taken before Robyn Lehrmann, a Notary Public
in and for the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

ROTH & ROTH, LLP

Attorneys for Plaintiff

192 Lexington Avenue, Suite 802

New York, New York 10016

BY: ELLIOT SHIELDS, ESQ

JOHN CAMPOLIETO, ESQ.

Attorney for Defendants

30 Church Street

Rochester, New York 14614

BY: JOHN CAMPOLIETO, ESQ.

1

2

STIPULATIONS

3

4

5

6

7

8

IT IS HEREBY STIPULATED AND AGREED by
and among counsel for the respective parties
hereto, that the sealing and certification of
the within deposition shall be and the same
are hereby waived;

9

10

11

12

IT IS FURTHER STIPULATED AND AGREED
that all objections, except to the form of
the question, shall be reserved to the time
of the trial;

13

14

15

16

17

18

19

20

21

22

23

24

25

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same force
and effect as if signed and sworn to before
the Court.

THE REPORTER: The attorneys
participating in the deposition
acknowledge that I am not
physically present in the
deposition room and that I will
be reporting this deposition
remotely.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

They further acknowledge
that in lieu of an oath
administered in person, I will
administer the oath remotely.

The parties and their
counsel consent to this
arrangement and waive any
objections to this manner of
reporting. Please indicate your
agreement by stating your name
and your agreement on the
record.

MR. CAMPOLIETO: I consent.
I will request a digital format
of the transcript.

MR. SHIELDS: I consent. I
will also request an e-mailed
copy of the transcript.

1

2 T O M E S H A A N G E L O ,

3 having been first duly sworn by a

4 Notary Public of the State of New York,

5 was examined and testified as follows:

6 EXAMINATION BY

7 MR. SHIELDS:

8 THE COURT REPORTER: Please

9 state your name for the record.

10 THE WITNESS: Tomesha

11 Angelo.

12 THE COURT REPORTER: Please

13 state your business address for

14 the record.

15 THE WITNESS: 185 Exchange

16 Boulevard, Rochester, New York

17 14614.

18 MR. CAMPOLIETO: The City

19 would request a review and

20 signing of the transcript.

21 Q Good morning, Investigator.

22 A Good morning.

23 Q My name is Elliot Shields and I

24 represent a man that was injured and I am

25 going to ask you some questions today.

1 Tomesha Angelo

2 A Okay.

3 Q If there is anything that I ask
4 you that you don't understand, please say so,
5 and I will gladly rephrase the question for
6 you, okay?

7 A Okay.

8 Q Otherwise, if you answer the
9 question, we will assume you understood it.
10 Do understand everything I said so far?

11 A Yes.

12 Q Do you agree to those terms?

13 A Yes.

14 Q If there is anything that I ask
15 you that you don't understand, you will let
16 me know, right?

17 A Yes.

18 Q So we are doing this deposition
19 virtually on zoom. Can you tell me where you
20 are doing the deposition from?

21 A City Hall.

22 Q I know you are in the room with
23 your attorney, John Campolieto. Is there
24 anyone else in the room with you?

25 A No.

1 Tomesha Angelo

2 Q Do you have any papers or any
3 other documents in the room with you that you
4 plan to review to help you answer any
5 questions?

6 A He has a whole file of stuff,
7 but I guess I can ask him for something if I
8 need it.

9 Q But there is nothing in front of
10 you that you plan to pick up and look at to
11 answer any questions, correct?

12 A No.

13 Q You understand everything that
14 you say today is going to get transcribed
15 into a little book that we are going to use
16 at trial in this matter?

17 A Okay.

18 Q Have you ever been questioned
19 under oath before?

20 A Yes.

21 Q How many times would you
22 estimate?

23 A I have been on the job seventeen
24 years, so I don't know. More than I can
25 count.

1 Tomesha Angelo

2 Q Every prior time that you have
3 testified, has that been in the context of a
4 criminal prosecution?

5 A Some of it was for family court
6 so I don't know if it is considered criminal
7 or civil.

8 Q Have you ever been deposed as
9 part of a civil lawsuit like this before?

10 A No, this is my first time.

11 Q Have you ever been named as a
12 defendant in any prior civil lawsuits like
13 this before?

14 A No.

15 MR. SHIELDS: John, since
16 you had the investigator give
17 her business address, do you
18 agree to produce the
19 investigator at the time of
20 trial?

21 MR. CAMPOLIETO: She didn't
22 give her home address?

23 MR. SHIELDS: She didn't.

24 MR. CAMPOLIETO: Yes, okay.
25 Anything you sent her you send

1 Tomesha Angelo
2 it to my address, it will get to
3 her. She gave you the business
4 address but, yes, I intend to
5 produce her at trial. She is
6 requested.

7 MR. SHIELDS: Thank you,
8 John.

9 Q So, Investigator, first I will
10 ask you some background questions, okay?

11 A Okay.

12 Q Can you tell me where you went
13 to high school?

14 A Grease Arcadia.

15 Q What is your highest level of
16 education?

17 A I have an associate's degree.

18 Q Where is that from?

19 A MCC.

20 Q What year did you get that
21 degree in?

22 A 2000.

23 Q What field did you get your
24 degree in?

25 A Criminal justice.

1 Tomesha Angelo

2 Q Do you just have one degree or
3 any other degrees?

4 A That degree.

5 Q How many years was that course
6 work?

7 A It was a two-year degree.

8 Q Did you do any police related
9 work while you were in college?

10 A No.

11 Q Did you do any security jobs or
12 anything like that?

13 A Not during college, no. It was
14 after college. Wait. Yes, I did. I worked
15 asset protection at Sears.

16 Q So asset protection is basically
17 one of the security guards at Sears?

18 A Yes.

19 Q Were you one of the uniformed
20 people on the floor or were you in the back
21 looking at cameras?

22 A There was no uniform. It was in
23 the back; sometimes they had us walking
24 around, but it was never in uniform.

25 Q Did you have to get any type of

1 Tomesha Angelo

2 certificates or licenses for that job?

3 A I don't know if that one
4 required a security guard card or not. I
5 don't remember. It was so long ago.

6 Q After that, did you work
7 additional security type jobs?

8 A After college you mean or after
9 that particular job?

10 Q Let me back up. Why don't you
11 give me an overview of your employment
12 history between when you began college and
13 when you started working at RPD?

14 A All right so in 2000, when I
15 began college, okay, so that was in '98. I
16 don't remember what year I started at Sears.
17 I started off working on cars, so I was in
18 the automotive department. That is when
19 security approached me and asked me to become
20 an asset protection for more money so that is
21 when I switched positions at Sears.

22 I think I was bartending at that
23 time and then I started work for security for
24 UR, and at one point I know I had several
25 jobs. I don't know if I was cooking at that

1 Tomesha Angelo

2 point still. And then I didn't -- then I
3 left the U of R in 2005. I think so I guess
4 it would either be automotive, maybe asset
5 protection. I wasn't in asset protection
6 long, bartending and the U of R.

7 MR. CAMPOLIETO: Just answer
8 the question he is asking.

9 A I'm trying to remember. I don't
10 know, it's been so long.

11 Q Thank you.

12 When you worked at that time U
13 of R, did you have to get any licensing or
14 certificates to work that security job?

15 A I think we were suppose to have
16 a guard card.

17 Q You think you were suppose to;
18 do you know if you did?

19 A I know I had a guard card at one
20 point. I don't know when I got it if it was
21 before that or during them. They had a long
22 training process.

23 Q How long was there training
24 process?

25 A I don't remember but I had to do

1 Tomesha Angelo

2 work. It was very similar, like, police work
3 where you had to do class work and then went
4 out in the field with somebody.

5 Q So it was basically like an
6 in-class training program and then you had
7 like a field training officer sort of?

8 A Yes.

9 Q The class work, it was a few
10 months at least?

11 A I don't remember.

12 Q Did you carry any weapons when
13 you were a U of R security guards?

14 A No. They had not gotten police
15 officer status at that time.

16 Q Did you do any police work for
17 any other agency before you joined the RPD?

18 A No.

19 Q When did you join the RPD?

20 A 2005.

21 Q Was that right after you left U
22 of R security?

23 A Yes.

24 Q So tell me how that happened,
25 did you apply for a job at RPD?

1 Tomesha Angelo

2 A Oh, no. Back up. I went per
3 diem for U of R for a while so I was
4 part-time and then I started 9-1-1, but I was
5 only 9-1-1 like five or eight months before I
6 got picked up by RPD, but I had to get the U
7 of R prior to RPD.

8 Q When you say you went to 9-1-1,
9 do you mean that you worked as a dispatcher?

10 A It is called a telecommunicator.
11 So I just answered phones; I never
12 dispatched.

13 Q So you answered calls that came
14 into 911?

15 A Yes.

16 Q How long did you do that for?

17 A It was either five months or
18 eight months.

19 Q During your time at U of R and
20 at 911, did you plan to apply to become an
21 RPD officer?

22 A Repeat that question.

23 Q When did you first apply to the
24 RPD?

25 A You have to take a test and I

1 Tomesha Angelo

2 took the test, I believe, three years before
3 getting hired.

4 Q So somewhere around 2002?

5 A Something like that.

6 Q You took the test, that's the
7 first step and then what is the next step?

8 A Physical agility.

9 Q So you take the test, they
10 called you up three years later in 2005; is
11 that when you took the physical agility test?

12 A No. It would have been
13 throughout this time and if you pass
14 everything, the requirements, any step you
15 can fail, but if you pass all the
16 requirements, RPD can call you up and say,
17 "Hey, you have the job."

18 Q So you have to basically get all
19 your tests passed, and then they will call
20 you when there is an opening?

21 A Yes.

22 Q So do you remember when you took
23 your physical agility test?

24 A No.

25 Q Sometime between 2002 and 2005?

1 Tomesha Angelo

2 A Yes.

3 Q You passed both of those tests
4 and they called you in 2005 and offered you a
5 position?

6 A Yes.

7 Q What is the first thing that
8 happened after that?

9 MR. CAMPOLIETO: Objection.

10 In terms of what, her job?

11 MR. SHIELDS: Yes.

12 Q What is the next step in the job
13 application process, going to the police
14 academy?

15 A Yes.

16 Q Where did you go to the police
17 academy?

18 A On Scottsville Road at the
19 Monroe Training Facility.

20 Q So that training at the police
21 academy, that would include officers from
22 other police departments in Monroe County,
23 not just RPD officers; is that correct?

24 A Yes.

25 Q So who put on the training, do

1 Tomesha Angelo

2 you know?

3 A I don't understand the question.

4 Q Let me withdraw that. Was the
5 training held by the New York State Division
6 of Criminal Justice Services?

7 A I honestly don't know.

8 Q It was the RPD, right, it
9 involved multiple agencies?

10 A Correct.

11 Q So the training that you
12 received, that is training that would apply
13 to officers statewide not just RPD officers,
14 right?

15 A Correct.

16 Q So you learn minimum standards
17 for officers, for all law enforcement
18 officers in New York State, right?

19 A Yes.

20 Q They teach you various different
21 types of police practices and procedures that
22 you have to know to become a police officer,
23 right?

24 A Yes.

25 Q They teach you the professional

1 Tomesha Angelo

2 standards of care that you have to employ as
3 a police officers?

4 A I don't know if that is what it
5 is called but how to read law books,
6 firearms, defensive tactics.

7 Q So the answer would be, yes, all
8 of those things are things that a
9 professional police officer needs to know to
10 do your job, right?

11 A Yes.

12 Q Basically they teach you the
13 minimum standards of care as a police
14 officer, you have to have probable cause, for
15 example, to make an arrest, right?

16 A Yes.

17 Q They teach you the law of
18 probable cause in the police academy?

19 A Yes.

20 Q They taught you about conducting
21 investigations?

22 A As an officer, yes.

23 Q So not at the police academy,
24 that was later?

25 A What do you mean?

1 Tomesha Angelo

2 Q You meant conducting
3 investigations as an officer as opposed to as
4 an investigator?

5 A Yes.

6 Q You are taught that you have to
7 be diligent when conducting an investigation,
8 right?

9 MR. CAMPOLIETO: Objection.

10 Go ahead an answer.

11 A Yes.

12 Q You were taught other things
13 like how to fill out paperwork?

14 A Yes.

15 Q Let's see, how long did you work
16 as a police officer?

17 A Ten years.

18 Q The first step, when you
19 graduate from the police academy is doing
20 field training; is that right?

21 A Yes.

22 Q How long does that last?

23 A Five or six months.

24 Q When you did your field training
25 it would have been 2005 or 2006?

1 Tomesha Angelo

2 A Yes.

3 Q Do you remember the date that
4 you graduated from the police academy?

5 A No.

6 Q But sometime in 2005 or six?

7 MR. CAMPOLIETO: If you
8 remember generally.

9 A Yes. It would have been the end
10 of 2005 beginning 2006.

11 Q Then you did field training for
12 five to six months and that would have ended
13 in 2006?

14 A So you don't graduate the
15 academy unless you pass field training so
16 graduation would have been after field
17 training.

18 Q Okay. Got it. Field training
19 is part of your training process?

20 A Yes.

21 Q This is part of the learning
22 process as a police officer?

23 A Yes.

24 Q What you are saying is that if
25 you fail field training, then you might not

1 Tomesha Angelo

2 graduate and you might not be able to become
3 a police officer?

4 A You wouldn't.

5 Q You wouldn't. Thank you.

6 Do you know any instances of
7 officers doing something in field training
8 that caused them to fail and not graduate?

9 A Yeah, it happens all the time.

10 Q It happens all the time? Can
11 you explain the field training process
12 generally to me?

13 A You were paired up with various
14 FTO, field training officers, and they show
15 you, literally -- you go to a call and in the
16 beginning you watch them, how they would do
17 it and then you are kind of given the lead,
18 like you take the lead, but then there is
19 somebody there to correct you if you are
20 doing something wrong or dangerous. And
21 then, towards the end, you have these
22 practice finals where you have to ask other
23 people for help even though your trainer is
24 right there watching and judging you.

25 Q Are there different phases of

1 Tomesha Angelo

2 the field training?

3 A Yes.

4 Q How many phases?

5 A Four, yes. Four there were with
6 me; I don't know if it has changed.

7 Q So you said at first you
8 basically follow, then you are given the
9 chance to try to take the lead. Would that
10 be phase two, when you get to take the lead a
11 little bit?

12 A It is different for everybody
13 depending on how fast you catch on or are
14 comfortable taking the lead.

15 Q Let me ask you this: Between
16 the academy in the beginning of field
17 training, do you have to pass a written test?

18 A We have lots of written tests
19 throughout. I don't recall if there was a
20 final, but there were tests throughout, yes.

21 Q Lots of written tests throughout
22 the academy, the class work?

23 A Yes.

24 Q There are also written tests as
25 part of the field training?

1 Tomesha Angelo

2 A No.

3 Q Your FTO would write up reports
4 to document your progress while you are doing
5 your field training?

6 A Yes.

7 Q Would that just be your FTO or
8 would there be other supervisors that would
9 supervise you and write up reports?

10 A No, just the FTO.

11 Q So the FTO is the person that
12 teaches you during that field training,
13 right?

14 A Yes.

15 Q Like a one-on-one mentorship?

16 A Yes.

17 Q At the end of that, you said you
18 take a test and you either graduate or you
19 don't?

20 A I don't think any of the tests
21 were when you are still in the academy.

22 MR. CAMPOLIETO: I didn't
23 hear her answer. Can you read
24 that back to me?

25 (The requested portion of

1 Tomesha Angelo

2 the record was read back by the
3 reporter.)

4 A There is no written test after
5 field training. All the tests are done in
6 the academy.

7 Q Got it.

8 A So if you are talking about
9 testing, as far as I know what, it is called
10 -- you are actually doing it. There is no
11 written test during field training. All the
12 written tests are in the academy, but if you
13 want to say whether or not they are being
14 tested as to whether or not they can do the
15 job, it is not a formal test, I guess you
16 would say, but they are all ultimately graded
17 each and every day on their performance.

18 Q When you say, "They are graded
19 every day on their performance," would that
20 be documented on some kind of paperwork
21 somewhere?

22 A Yes.

23 Q So, like, I don't know. If they
24 are given the opportunity to drive the
25 vehicle and they get in a crash, that could

1 Tomesha Angelo

2 be a negative thing that maybe would cause
3 them not to graduate, right?

4 A Correct.

5 Q During that time, they are still
6 called recruits during that time?

7 A Yes.

8 Q During that time, recruits would
9 go with FTO to crime scenes and basically do
10 all the police work alongside a uniform
11 police officer, right?

12 A Yes.

13 Q Do recruits wear different
14 uniforms?

15 A No.

16 Q Same uniform?

17 A In the academy they wear greys
18 but on the field they wear blues.

19 Q So people can't really tell the
20 difference?

21 A Correct.

22 Q So you said you were a police
23 officer with the RPD for ten years, right?

24 A Yes.

25 Q Then, after that ten years, you

1 Tomesha Angelo

2 were promoted to investigator?

3 A Yes.

4 Q Can you tell me the process of
5 how you became an investigator?

6 A It is just a Civil Service exam.

7 Q So you took the exam because you
8 want to be an investigator instead of a
9 police officer, right?

10 A Yes.

11 Q By the way, why did you make
12 that decision?

13 A Something that I was is
14 interested in, and it was a promotion. It
15 was the next step in my career.

16 Q So you make more money?

17 A Yes.

18 Q What do Investigators do?

19 A Lots of stuff. When you become
20 an investigator, you can either handle
21 in-progress calls, you can get assigned a
22 case that was -- a report was taken from
23 another officer, but more follow up needs to
24 be done, so you were assigned that case. I
25 would say good majority of our job is just

1 Tomesha Angelo

2 assisting the officers when they have
3 questions, or don't know how to do paperwork
4 or need clarification on a law, and they
5 wanted to either know your experience or if
6 you can get hold of the DA.

7 Q So you have more responsibility?

8 A Yes.

9 Q Is there a minimum amount of
10 time that you have to work as a police
11 officer before you can apply?

12 A Yes.

13 Q What is that?

14 A Three years.

15 Q So do you remember the date that
16 you became an investigator?

17 A Yes.

18 Q What was that date?

19 A April 10th, 2015.

20 Q It was like a promotion ceremony
21 when you officially were promoted?

22 A Yes.

23 Q When you became an investigator,
24 did you receive additional training?

25 A Not really. So back then there

1 Tomesha Angelo
2 was no mandatory training. They just started
3 like, hey, I think we should do some FTO kind
4 of stuff so that really wasn't established
5 yet, but you can, on your own, take
6 additional classes or sign up to take classes
7 but a lot of the training at the time -- I
8 don't know what the word would be. You learn
9 as you go kind of thing.

10 Q You learn as you go, but you are
11 not paired up with a more experienced
12 investigator to show you the ropes?

13 A They tried doing that for a
14 while. When I got promoted, it was when they
15 were first starting to talk about that. When
16 I got promoted, they were changing from east
17 to west to sections. They didn't have
18 anywhere for us to go so we did
19 kind-of-sort-of pair up, but there was no
20 official training.

21 Q Did you have a direct supervisor
22 when you were first promoted?

23 A When I got assigned, it was in
24 central section so my direct supervisor would
25 have been Sergeant Zimmerman.

1 Tomesha Angelo

2 Q Sergeants are above
3 Investigators?

4 A Yes.

5 Q Down here in the NYPD we have
6 detectives. Investigators in Rochester, are
7 they basically the equivalent, is that your
8 understanding?

9 A Well, they weren't; they are
10 now. So prior to a lawsuit, Investigators
11 were an internal promotion that was not
12 recognized by the state. Whereas, detectives
13 had to take a Civil Service exam and were
14 recognized by the state as a promotion and
15 then there was a big lawsuit and now they are
16 both recognized as a promotion by the state
17 so they are equivalent.

18 Q That happened before you were
19 promoted, correct?

20 A I don't think so. I don't think
21 so. I think that lawsuit was after.

22 Q Did that lawsuit affect your job
23 duties at all?

24 A I don't think so.

25 Q Did it affect your pay?

1 Tomesha Angelo

2 A I don't remember. I don't know.

3 Q It is just interesting to me.

4 A With the union contract, I don't
5 know. I don't know.

6 Q So you are promoted to
7 investigator in April 2015 and you start to
8 learn on the job, right?

9 A Yes.

10 Q Generally, how do your job
11 duties change once you became an
12 investigator?

13 A Normally as an officer, you
14 know, you start the preliminary investigation
15 and once it is -- the preliminary
16 investigation is done, you can either hang
17 onto it or you can -- it can go to a
18 specialized -- say we use to have an economic
19 crimes unit, it could have got transferred
20 there. But as an investigator, once it is
21 assigned to you, I mean, that is your case.

22 Q So the case stays with you
23 basically?

24 A Usually. And then if -- so say
25 for example there was a shooting and you are

1 Tomesha Angelo
2 working it and eventually the person passes
3 away, then that would get transferred to
4 homicide, but homicide will say, you worked
5 so long in this, you can stay on this case
6 too. So it just really depends.

7 Q Got it. But for the most part,
8 one of the differences is that, as an
9 officer, you do the initial work and pass it
10 on; as an investigator it is your case?

11 A Sometimes. Me, as an officer, I
12 would hold onto cases; very rarely would I
13 pass them on. Officers can take the case and
14 run with it or they can turn it over to
15 somebody; there is just too many variables to
16 answer that question.

17 Q When you say, when you were an
18 officer you would hold onto the case, is that
19 a decision that officers get to make or that
20 is made by your boss?

21 A Both.

22 Q As an investigator, one of the
23 things that you do is coordinate with the
24 District Attorney's office?

25 A Try to, yes.

1 Tomesha Angelo

2 Q You said you can do voluntary
3 training when you become an investigator.
4 Did you do any voluntary training when you
5 became an investigator?

6 A You can sign up for courses. I
7 have been signing up for courses. I couldn't
8 tell you when I took what, whether it was
9 before or after.

10 Q Those courses relate to your
11 work as an investigator, right?

12 A Yes.

13 Q If you sign up for a voluntary
14 class, do you have to tell the RPD?

15 A They are the ones that put it
16 on.

17 Q So you would sign up for classes
18 that the RPD hosts?

19 A Yes.

20 Q Would you also do --

21 A You don't always get them and it
22 also depends on staffing levels.

23 MR. CAMPOLIETO: Just answer
24 his question.

25 A I'm sorry.

1 Tomesha Angelo

2 Q When you say you don't always
3 get them, you mean the RPD will say, "Hey
4 there is a class that we want to host," and
5 maybe you need to get twenty people to sign
6 up and if twenty people don't sign up, then
7 it will be canceled?

8 A I am sure that is what happens,
9 but, for example, if you have a class RPD
10 puts on, "Hey we're putting on this class,"
11 you tell your boss, "I am interested" and the
12 bosses figure out how many people can we lose
13 that day and can you go and even though you
14 have seniority, your shift might be short
15 that day and somebody with lessor seniority
16 might be able to go on a different sheet.
17 So, you have to wait for the next time they
18 host that class to get that certification.

19 Q So those are voluntary? Those
20 are not things that the RPD says you have to
21 do this as part of a yearly requirement for a
22 number of hours or something else, right?

23 A Correct.

24 Q Do you have any kind of minimum
25 required in-service training hours?

1 Tomesha Angelo

2 A Yes.

3 Q What is that?

4 A No idea.

5 Q You just do it and complete the
6 hours every day?

7 A Yes. I have no say in what gets
8 trained to us. Every year we have in-service
9 and we just go to it.

10 Q Are there specific topics that
11 you to get in-service training on every year?

12 A Every year. I think the sexual
13 harassment stuff we're required every year
14 and, you know, every few years we have to do
15 some type of training for deaf and hard of
16 hearing. Other than that I don't know what
17 the requirements are. I'm sorry.

18 Q You have to get firearms
19 training every year?

20 A Yes.

21 Q Other than firearms training and
22 sex -- let me back that up. What was the
23 sexual harassment training that you said?

24 A I am pretty sure there is sexual
25 harassment training we have to do every so

1 Tomesha Angelo

2 often. I don't know if it is yearly. I know
3 our deaf and hard of hearing we have to do
4 every so often, but other than that, I don't
5 know what the other requirements are.

6 Q The deaf and hard of hearing you
7 think that is because Rochester has a large
8 deaf population?

9 A I don't know why.

10 Q You just know that periodically
11 you are required to take that training?

12 A Yes.

13 Q So it sounds like the only
14 training you are required to get every year
15 is firearms training?

16 A I don't know.

17 Q Is there any other training that
18 you remember taking every year?

19 A No.

20 Q As it relates to work as an
21 investigator, how often do you take voluntary
22 training courses?

23 A I don't know.

24 Q What is the last training that
25 you did?

1 Tomesha Angelo

2 A Forensic interviewing.

3 Q When was that?

4 A Last year, I think.

5 Q What was that course about?

6 A Interviewing children in a
7 forensic interviewing way.

8 Q Generally, what is forensic
9 interviewing?

10 A Nonleading, nonsuggestive
11 questions.

12 Q Which seems like it would be
13 especially important with children?

14 A Yes.

15 Q When you go to these trainings,
16 did they give you handouts?

17 A This was over zoom so that if
18 they did send information, a lot of it was
19 too large to print out.

20 Q When you go to a training like
21 that, does RPD have a library that you are
22 required to store those training materials
23 in?

24 A I wouldn't know.

25 Q So if you wanted to access

1 Tomesha Angelo

2 training materials from a course that you
3 took five years ago, would you be able to do
4 that somehow?

5 A I don't know. But I would ask
6 PDS, they are in charge of training; I am
7 sure they would know.

8 Q So if you took a voluntary
9 training PDS would have a record of that,
10 right?

11 A I would hope so, yes.

12 Q It is part of your personnel
13 file?

14 A I believe so.

15 Q Can you give me an overview of
16 what PDS does?

17 A I don't know.

18 Q But they handle all of the
19 training for the RPD?

20 A Yes.

21 Q That is the Professional
22 Development Section?

23 A Yes.

24 Q If you sign up for training, who
25 do you tell, your direct boss or do you tell

1 Tomesha Angelo

2 PDS?

3 A Yes. Well, you would have to
4 ask your direct boss if you could take the
5 training.

6 Q Got it. Then they would
7 register you with PDS?

8 A Yes, and depending on the
9 courses sometimes you have to go online and
10 fill out some stuff.

11 Q Have they ever asked for or
12 looked at the list of the training that you
13 have taken?

14 A Yes. When I was -- yes. I
15 think it was last year.

16 Q Why did you do that?

17 A I was trying to apply for Major
18 Crimes.

19 Q Were you able to obtain that
20 list?

21 A I don't know if she just
22 answered one of the questions I had or sent
23 me the whole list.

24 Q So you know that the list
25 existed as of last year at least?

1 Tomesha Angelo

2 A Yes.

3 MR. SHIELDS: John, I am
4 going to call for production of
5 the list of all of her training.

6 I was looking through my
7 discovery that I got from you
8 and I think we demanded all the
9 training from the officers, but
10 if not, I am calling for
11 production of all of her
12 training records at this point,
13 okay.

14 MR. CAMPOLIETO: Just for
15 this Investigator?

16 MR. SHIELDS: Well, now that
17 you mention it, for this
18 investigator and all the other
19 defendants.

20 MR. CAMPOLIETO: All right.
21 Let me look into it.

22 MR. SHIELDS: Yes.

23 Q You said the in-service training
24 would be held by the RPD, right?

25 A Yes.

1 Tomesha Angelo

2 Q Sometimes would you take
3 training at the Monroe County Training Center
4 also?

5 A Yes.

6 Q Would that be hosted by DCJS?

7 A I don't know.

8 Q Do you know if you have taken
9 DCJS training other than at the police
10 academy?

11 A I don't know.

12 Q That should be something that
13 would be reflected in your training records,
14 right?

15 A I don't know how that is all
16 documented.

17 Q For example, like you said with
18 PDS, they would have records of the training
19 that you took, so they should know if it was
20 at the RPD or at a different location, right?

21 A I would like to assume so, but I
22 am not going to say because I don't work
23 there. I don't know.

24 Q Other than at the Monroe County
25 Training Center and at the RPD, have you ever

1 Tomesha Angelo

2 taken training put on by private companies?

3 A Yes. I think the forensic
4 interviewer was a private company.

5 Q What was that private company,
6 if you remember?

7 A Child First.

8 Q Can you say that again, Child
9 First?

10 A I think that is the name of it.

11 Q There was a training a few years
12 ago by Bill Lewinski, did you attend that
13 training?

14 A What was it for?

15 MR. CAMPOLIETO: Answer the
16 question.

17 A I don't know.

18 Q You don't know. That is your
19 answer?

20 A No.

21 Q That is just one private
22 training that was reported widely in the news
23 so that is just one private company that I
24 knew off the top of my head. But you don't
25 remember attending that training, right?

1 Tomesha Angelo

2 A I don't know.

3 Q Do you remember that training
4 being reported about in the news?

5 A No.

6 Q Of these trainings, I think you
7 mentioned sometimes you receive a
8 certification; is that right?

9 A Yes.

10 Q That would be something that
11 would be part of your personnel file?

12 A I hope so. I don't know. I
13 don't know. I don't look. I don't know.

14 MR. CAMPOLIETO: The answer
15 is "I don't know."

16 THE WITNESS: I'm sorry.

17 Q Those certificates, what do they
18 do for you when you earn a certificate? It
19 just certifies that you completed that
20 training?

21 A Yes.

22 Q It helps you apply for jobs like
23 for Major Crimes last year?

24 A It depends on what the position
25 is requesting. So if that position is

1 Tomesha Angelo

2 requesting something specific that you took,
3 then you have to prove that you took it.

4 Q Are there ever requirements that
5 you take certain training for certain
6 positions?

7 A You have to be more specific.

8 Q When you applied for the job
9 with Major Crimes, did it require that you
10 had taken certain training?

11 A I recall one of the trainings
12 was required was the Forensic Interviewing.

13 Q What is your title right now?

14 A Investigator.

15 Q So you are still an
16 investigator?

17 A Yes.

18 Q Are you still in the application
19 process for the Major Crimes job?

20 A No.

21 Q You just didn't get it?

22 A No, I did get it.

23 Q So now you are an investigator
24 with Major Crimes?

25 A Yes, is it lateral move. It is

1 Tomesha Angelo

2 just a different unit. Same title, different
3 unit.

4 Q What unit were you in September,
5 2015?

6 A I was with patrol investigation
7 with the central section.

8 Q Did you ever do any training
9 related to collection of evidence?

10 A Training? No, not that I
11 remember.

12 Q Not at the academy?

13 A No. It wasn't big at the
14 academy.

15 Q Not after you became an
16 investigator either?

17 A No.

18 Q Did you ever do any training on
19 video analysis?

20 A I don't -- I am trying to
21 remember. I don't remember.

22 Q For example, there are some
23 security cameras that record night vision,
24 right?

25 A Yes.

1 Tomesha Angelo

2 Q So that would be important, to
3 understand how a night vision camera works,
4 an opposed to a regular camera, right?

5 A I never have taken training with
6 regard to that.

7 Q Obviously every camera is
8 different, right?

9 A Correct.

10 Q So like frame rates are
11 different? Do you know what frame rates and
12 drop speed would be?

13 A I am not commissioned when it
14 comes to cameras.

15 Q Is reviewing security camera
16 something that you have to do regularly in
17 your job as an investigator?

18 A Sometimes.

19 Q So you have a general
20 understanding from on-the-job work how
21 different cameras work, right?

22 A I know they work different but
23 as far as their operating capacity, I
24 couldn't tell you.

25 Q Some videos are clearer than

1 Tomesha Angelo

2 other videos?

3 A Correct, yes.

4 Q Some are choppiier than other
5 videos?

6 A Yes.

7 Q Some have different file types
8 that work with different video players?

9 A Yes.

10 Q Did you ever take any training
11 with dealing with individuals with mental
12 health conditions?

13 A I think that was part of
14 in-service before.

15 Q So it might have been an
16 in-service training?

17 A I think so.

18 Q Are in-service trainings
19 required by the RPD?

20 A Yes.

21 Q So you said some of the training
22 that you do is voluntary, but that would be
23 something different than in-service training,
24 right?

25 A Correct.

1 Tomesha Angelo

2 Q So in-service training is
3 something that from top down they say
4 everybody in the department has to take this;
5 is that right?

6 A Yes.

7 Q Sometimes though would it be
8 like a one-time thing?

9 A You mean they were annual, is
10 that your question?

11 Q Correct, it could be, hey, for
12 example, a court decision came down, there is
13 a change in the law, person has to take this
14 training one time?

15 A Yes.

16 Q After that, maybe there is not a
17 follow-up on that topic to make sure it
18 really sank in for everybody?

19 A Correct.

20 Q Do you know why firearms
21 training is required every year as opposed to
22 other topics?

23 A No.

24 Q Is it because you have to
25 maintain a certificate or a license to carry

1 Tomesha Angelo

2 a firearm in New York?

3 A I don't know the reasoning.

4 Q Do you remember when you took
5 the in-service training about dealing with
6 individuals with mental health conditions?

7 A No.

8 Q Do you know if it was before or
9 after September 2015?

10 A I do not remember.

11 Q Do you think it was more than a
12 couple of years ago?

13 A I don't remember.

14 Q Can you give any kind of
15 estimate on when it might have been.

16 A No. I mean I feel like, I don't
17 want to -- I don't know. Sorry.

18 MR. SHIELDS: John, it is a
19 little hard when you are
20 obviously sitting right next to
21 here. Just, can you verbalize
22 any objections that you have. I
23 don't want her looking at you.

24 MR. CAMPOLIETO: Yes, I am
25 trying to let this flow. She

1 Tomesha Angelo
2 answered twice, "I don't know."
3 The objection is that she
4 answered the question twice; she
5 answered a third time, she
6 doesn't know.

7 MR. SHIELDS: That is fine.
8 I just want you to be able to
9 get it on the record, okay?

10 MR. CAMPOLIETO: Got you.

11 Q Do you know if, at that
12 training, you learned about specifically
13 dealing with individuals who have been
14 diagnosed as schizophrenic?

15 A Specifically, no. I don't
16 recall what the specifics were.

17 Q You don't remember any specifics
18 about that training at all?

19 A No.

20 Q Do you know if in general
21 dealing with people in mental health
22 conditions is something that the RPD requires
23 its officers to be trained on?

24 A I don't know if it is a
25 requirement.

1 Tomesha Angelo

2 Q Is that something that you
3 learned anything about at the academy?

4 A Yes.

5 Q There is general training about
6 dealing with people with mental health
7 conditions at the academy?

8 A I believe so, yes.

9 Q When you do in-service
10 trainings, do you get certificates similar to
11 the voluntary training that you do?

12 A No, not that I recall.

13 Q Are you a member of any
14 professional associations?

15 A Such as what?

16 Q I don't know. I know for
17 example, International Police Mountain Biking
18 Club?

19 A When it comes to, like, police
20 stuff, am I a member of stuff?

21 Q Correct.

22 A I am a member of IALEO.

23 Q What is IALEO?

24 A Italian American Law Enforcement
25 Officers.

1 Tomesha Angelo

2 Q Is that a nationwide
3 association?

4 A I don't know if it is
5 nationwide.

6 Q There is a Rochester chapter?

7 A Yes. I don't know if it is just
8 in Rochester or -- I don't know.

9 Q Are there members of other law
10 enforcement agencies other than the RPD?

11 A Yes.

12 Q Anything else?

13 A No.

14 Q With IALEO do you do lobbying?

15 A I don't. I don't know if they
16 do.

17 Q What do you do? Is it social?

18 A It is social.

19 Q Social?

20 A Yes.

21 Q Do you remember the Locust Club?

22 A Yes. That is our union.

23 Q Any other unions or law
24 enforcement associations?

25 A No.

1 Tomesha Angelo

2 Q Just going back to your training
3 at the police academy and your in-service
4 training and your certificate training, that
5 is what I will call it, training that you
6 received, voluntary training, certificate
7 training; that fair to call it?

8 A Sometimes you get one; sometimes
9 you don't.

10 Q Do you agree that the New York
11 State Division of Criminal Justice Services
12 establishes the standards for all law
13 enforcement in New York State?

14 A Yes.

15 Q But can the RPD can have
16 policies that create a higher standard?

17 A More strict?

18 Q Correct.

19 A Yes.

20 Q But they wouldn't go below that
21 minimum standard set by DCJS, right?

22 A Correct.

23 Q Those DCJS rules of the road,
24 they set forth the proper and established
25 procedures and practices, right?

1 Tomesha Angelo

2 A As far as I know, yes.

3 Q If you violated those DCJS rules
4 of the road that would be a violation of the
5 proper and required practices and procedures,
6 right?

7 A I don't know if you can get
8 violatations for DCJS, but I think our
9 policies are based on DCJS so you would be a
10 violation on our policies.

11 Q So it would be a violation, an
12 internal violation of RPD policy?

13 A Whatever they were set,
14 depending on what you are talking about.

15 Q The policies they set forth,
16 professional standards, right, so if you
17 violate your policies, that would be a
18 violation of professional standards?

19 A I don't -- I don't know what it
20 would be called. I'm sorry.

21 Q If you violated the policies,
22 that would be a violation of good and
23 accepted police practices?

24 MR. CAMPOLIETO: Objection.

25 A It would be a violation of

1 Tomesha Angelo

2 whatever policy, not just in general
3 violation.

4 Q In the policies, they set forth
5 good and accepted police practices, right?

6 A Yes.

7 Q So the answer would be, Yes, if
8 you violated the policies that would be a
9 violation of good and accepted police
10 practices, right?

11 MR. CAMPOLIETO: Objection.
12 Vague.

13 MR. SHIELDS: She just
14 answered the question, John, you
15 can't object.

16 MR. CAMPOLIETO: What is
17 good and proper police work?
18 Define it. I don't know what
19 that is.

20 MR. SHIELDS: I just defined
21 it for her and she said, "The
22 policy set forth good and
23 accepted police practices."

24 MR. CAMPOLIETO: Objection.
25 Vague.

1 Tomesha Angelo

2 A But every policy -- you can't
3 just say this person was in violation of good
4 practice and policies. They were in
5 violation of A, B and C which are based on
6 the DC -- whatever the state policies are.
7 So when you violate someone, it is not a
8 general thing; it is a violation of A, B or C
9 which are all based on state practices, state
10 standards.

11 Q Is it fair to say your duty as
12 investigator is to conduct thorough
13 investigations?

14 A Yes.

15 Q It is a priority, right, to
16 ensure that you do your due diligence?

17 MR. CAMPOLIETO: Objection.

18 MR. SHIELDS: John?

19 MR. CAMPOLIETO: Priority to
20 whom and what is the priority?

21 MR. SHIELDS: Stop
22 instructing the witness. You
23 can say your objection and she
24 can go ahead an answer.

25 MR. CAMPOLIETO: You

1 Tomesha Angelo

2 continued, Elliot. It is an
3 objection. It is vague.

4 A So if I am assigned an
5 investigation, I am going to do my due
6 diligence and be as thorough as I possibly
7 can, but as an investigator, sometimes I am
8 just there to assist or they just have
9 questions or they just need me to create a
10 photo array so...

11 Q So when it is your case that is
12 assigned to you, you are investigating,
13 right?

14 A Yes.

15 Q Then you are going to do your
16 due diligence, right?

17 MR. CAMPOLIETO: Objection.

18 Q It is your priority to do your
19 due diligence when you have a case assigned
20 to you, right?

21 A As far as my due diligence, as
22 far as running down evidence or my due
23 diligence for the victim or my due diligence
24 for --

25 Q Correct.

1 Tomesha Angelo

2 A Which one?

3 Q All of the above.

4 Let's start with doing your due
5 diligence in terms of collecting all the
6 relevant evidence, right?

7 A Uh-huh.

8 Q Is it priority to collect all of
9 the evidence as part of your due diligence in
10 investigating?

11 A It depends on the investigation.

12 Q What sort of things would that
13 depend on?

14 A Well, I am not going to treat a
15 violation -- if I am investigating a
16 violation, I am not going to treat it like it
17 is a homicide and depose the entire
18 neighborhood or collect every single --

19 MR. CAMPOLIETO: Is that
20 what you are asking, Elliot?
21 What are you asking?

22 Q You are a professional, right?

23 A I'm a professional.

24 Q Correct?

25 A Yes.

1 Tomesha Angelo

2 Q So as part of a professional
3 police investigation, to make sure you are
4 doing your due diligence, if you are
5 investigating a felony, you are going to make
6 sure you track down all of the relevant
7 evidence, right?

8 A I am going to try to.

9 MR. CAMPOLIETO: Objection.

10 THE WITNESS: Sorry.

11 MR. CAMPOLIETO: You can
12 answer.

13 A I am going to try to.

14 Q You can't ignore evidence,
15 right?

16 A Ignore it?

17 Q Correct.

18 A Well, I don't.

19 Q You wouldn't, right?

20 A Well, at least I try not to.
21 Sometimes you are not aware of it.

22 Q If you are aware of evidence you
23 are not allowed to ignore it, right?

24 A I wouldn't.

25 Q You wouldn't because you are not

1 Tomesha Angelo

2 allowed to, right?

3 MR. CAMPOLIETO: Objection.

4 Go ahead.

5 A I don't know what the policy on
6 that -- I don't know how to answer that. I
7 can tell you what I would do.

8 Q Yes.

9 You need to collect all of the
10 evidence? For example, if you are going to
11 charge someone with a felony crime, the basis
12 for probable cause is totality of the
13 circumstances, right?

14 A Sometimes, yes.

15 Q So you need all of the relevant
16 evidence that would go into your
17 determination of making a probable cause
18 analysis, right?

19 A Then the issue becomes, what is
20 relevant, so I may look at something and say,
21 "Hey, technician, I want you to collect A, B
22 and C," but based on the technician's
23 experience and training, she is only going to
24 collect B and C, I can't tell -- I have no
25 authority over a technician, what she

1 Tomesha Angelo

2 collects because she has the training when it
3 comes to that.

4 So it just depends. So I can
5 put my two cents in; I don't have final say.

6 Q When you are conducting an
7 investigation, the things that you have
8 control over, you make sure to collect all of
9 that evidence, correct?

10 A I do, yes.

11 Q You do that because that is what
12 is required in order to ensure all of the
13 relevant evidence to the case is preserved,
14 right?

15 MR. CAMPOLIETO: Objection.

16 Go ahead.

17 A I try my best to support
18 whatever the allegation is or isn't.
19 Sometimes you have to prove something didn't
20 happen.

21 Q Best practices would be, collect
22 all the evidence, right, make sure it is
23 preserve3d?

24 A Correct.

25 Q Would it be fair to say as a

1 Tomesha Angelo

2 professional police investigator you follow
3 professional standards of conduct for your
4 performance, right?

5 A Yes.

6 Q You adhere to a code of ethics?

7 MR. CAMPOLIETO: The
8 Rochester Department Code of
9 Ethics and Rochester Police
10 Standards?

11 Q I am just saying, you adhere to
12 a code of ethics; that is my question?

13 A Yes.

14 Q So you have to follow all of the
15 leads and explore all evidence, right?

16 A Well, it depends on the case,
17 again.

18 Q Okay. Let me back up for a
19 second, I forgot to ask you. Can you tell me
20 everything that you did to prepare for
21 today's deposition?

22 A I read over the package.

23 Q When you say, "the package,"
24 what are you referring to?

25 A There was an arrest package that

1 Tomesha Angelo

2 was made.

3 Q What was in the arrest package?

4 A Grand jury referral, crime
5 report, an IA, a technician's report, and I
6 think there were two depositions.

7 Q Did you speak to anybody?

8 A Other than my lawyer?

9 Q Just a yes or no question.

10 A My lawyer, yes.

11 Q When did you speak with your
12 lawyer? Don't tell me anything that you
13 talked about. When was the meeting?

14 A The meeting? Just when I got
15 here.

16 Q Before today, did you speak with
17 John or any other lawyer in the law
18 department about this deposition?

19 A Well, we talked -- we did talk
20 once before.

21 Q Other than John, did you speak
22 with anybody else about today's deposition?

23 A No.

24 Q Your husband?

25 A I don't have a husband.

1 Tomesha Angelo

2 Q I'm sorry for presuming.

3 Any friends or anybody?

4 A No.

5 Q Any other defendants in this
6 case?

7 A No.

8 Q Have you ever spoken to any of
9 defendants in this case about this case?

10 A Yes.

11 Q When was that?

12 A When I got served with the
13 lawsuit.

14 Q Who did you speak with?

15 A Kester.

16 Q What did you talk about?

17 A I just asked what happened and
18 why we were getting sued.

19 Q And what did he say?

20 A Just that it went to court and I
21 don't know the term he used but that he
22 didn't get convicted and now he is suing us.

23 Q Before speaking with Kester did
24 you know that the criminal charges against my
25 client, David Van, had been dismissed?

1 Tomesha Angelo

2 A I knew nothing about this case
3 until I got served.

4 Q Did you speak to Kester again
5 before today's deposition?

6 A No. Not about this case, but I
7 do speak to him regarding investigations.

8 Q But you haven't spoken with him
9 about this case?

10 A No.

11 Q So the only conversation that
12 you had with him was after you got served
13 with this lawsuit?

14 A Yes.

15 Q Did you speak to anybody else
16 other than Kester?

17 A That is named?

18 Q Or anyone else in the police
19 department.

20 A In the police department? The
21 union.

22 Q Who did you speak with at the
23 union?

24 A I don't know. It was a long
25 time ago.

1 Tomesha Angelo

2 Q Are you required to tell your
3 union if you are served with a civil lawsuit?

4 A I don't know if I am required,
5 but I have never been served so I asked.

6 Q You asked your union
7 representative or something else?

8 A No. I think I called the union
9 directly.

10 Q What did they tell you?

11 A Just that the city lawyer would
12 be in contact with me.

13 Q After you got the copy of the
14 Summons and Complaint, what did you do with
15 it?

16 A Read it.

17 Q So you understand the basic
18 allegations in the case from reading the
19 lawsuit?

20 A I don't remember them all
21 because I read it a long time ago.

22 Q After getting served, you
23 basically called the union and they said the
24 city would be in touch with you?

25 A Yes.

1 Tomesha Angelo

2 Q Do you have to request
3 representation from the city when you are
4 served with a lawsuit?

5 A I don't know if I am suppose to.

6 Q There is no rule that you are
7 aware of that says, "Hey, I have to reach out
8 and request representation from The City Law
9 Department?"

10 A Not that I know of.

11 Q Did you ever consider hiring a
12 private attorney instead?

13 A No.

14 Q Are you aware that is an option?

15 A I never thought about it.

16 Q Did you ever speak with anyone
17 in the District Attorney's Office about this
18 lawsuit?

19 A No.

20 Q As part of the underlying
21 criminal prosecution, did you speak with
22 anybody in the District Attorney's Office?

23 A No. I don't think I spoke to
24 anybody regarding that trial.

25 Q So if you didn't speak with

1 Tomesha Angelo

2 anybody, then you didn't testify at the grand
3 jury, right?

4 A No, I don't think I did.

5 Q You didn't testify at the trial?

6 A I definitely didn't testify at a
7 trial.

8 MR. SHIELDS: Let's take a
9 recess.

10 (A recess was taken at this
11 time.)

12 Q Investigator, we had a little
13 break there for about fifteen minutes. Did
14 you have a chance to speak with
15 Mr. Campolieto?

16 A I used the restroom.

17 Q Did you speak to Mr. Campolieto
18 at all?

19 A Yes.

20 Q Is there any answer that you
21 gave that you would like to change in any
22 way?

23 A I don't know. It is just hard
24 to do yes or no answers, so sometimes it --
25 there just needs to be more said.

1 Tomesha Angelo

2 Q I will try not to take up the
3 whole day. If you can do yes or no, that
4 makes things go a lot quicker so I appreciate
5 you trying. I am almost done with this line
6 of questioning, but I have a few more, okay?

7 A Okay.

8 Q When you are investigating a
9 crime in general, there are uniform
10 procedures; is that fair to say?

11 A I don't know if they would be
12 considered uniform procedures.

13 Q Earlier you said the first thing
14 that is done is the officers would conduct a
15 preliminary investigation?

16 A Right, but I don't know if that
17 is like set in stone. It is just when you go
18 to a scene there is, who, why, what, when
19 kind of thing.

20 Q Yes, that is what I mean. For
21 example, you speak with the victim?

22 A If you can. Sometimes the
23 victim can't talk; sometimes witnesses aren't
24 available; sometimes suspects aren't
25 available.

1 Tomesha Angelo

2 Q You secure the scene?

3 A Yes. The best you can, yes.

4 Q You identify any evidence that
5 you can collect?

6 A Yes.

7 Q You collect that evidence?

8 A Depending.

9 Q Depending on, if it is
10 physically able to be collected?

11 A That, and it also depends on the
12 crime. Like I said, you are not going to
13 treat a violation the same as you will a
14 homicide, so. You are not getting witness'
15 depositions for certain crimes. You are not
16 collecting video for certain crimes. You
17 don't collect video for every single crime.
18 It just depends; it all depends.

19 Q Got it.

20 When did you first become
21 involved in the investigation of this
22 incident?

23 A I think after I heard the
24 officers calling out that somebody was
25 injured, I went to see if they needed a hand.

1 Tomesha Angelo

2 Q Where did you hear that?

3 A On the radio.

4 Q At the time, were you in your
5 car?

6 A I don't remember where I was at
7 the time.

8 Q Did you hear your radio even if
9 you are not in the car?

10 A Yes, I have a hand set.

11 Q So you hear it on the radio and
12 you respond to the scene?

13 A Yes.

14 Q Yes. What is the first thing
15 that you remember when you arrived at the
16 scene?

17 A The first thing I remember is
18 Sarge telling me to take a deposition from
19 somebody in the store.

20 Q When you say, "Sarge," who is
21 that?

22 A Zimmerman.

23 Q Do you remember everyone that
24 was on scene when you arrived?

25 A There was quite a few so I might

1 Tomesha Angelo

2 miss some.

3 Q Can you tell me who you
4 remember?

5 A Kester, Mitchell, Drake,
6 Kephart, Sarge, Brodsky. I think LaFave,
7 L-A-F-A-V-E.

8 (Reporter clarification.)

9 A Me. The technician showed up.

10 Q Do you remember seeing my
11 client?

12 A Your client was in the back of a
13 car so I never saw his face. I just saw the
14 car moving and him either banging or kicking,
15 trying to kick the window out because it was
16 near where I was standing.

17 Q You remember that?

18 A Yeah.

19 Q When you say, "Sarge," again,
20 you are referring to Zimmerman?

21 A Yes.

22 Q Did you ever speak to my client?

23 A No. He was very out of control
24 in the back of the car so he was not calm
25 enough for me to speak to.

1 Tomesha Angelo

2 Q Was there an ambulance on scene
3 when you arrived?

4 A I don't remember if they were
5 there yet.

6 Q When you arrived, were you the
7 only investigator on the scene?

8 A Yes.

9 Q Your job as the investigator on
10 the scene is to gather and collect the
11 evidence?

12 A No. I was there to assist the
13 officers in their investigation.

14 Q Were you the case coordinator?

15 A So case coordinator means I put
16 the paperwork together, but I was not the
17 lead on this investigation.

18 Q Who was the lead on this
19 investigation?

20 A Mitchell.

21 Q When you gather the evidence,
22 you want to be able to solve the crime,
23 right?

24 A It depends. Sometimes you
25 gather evidence to prove something didn't

1 Tomesha Angelo
2 happen, but it just depends, and just because
3 I am an investigator, doesn't mean I am the
4 only one that gathers evidence. Sometimes
5 other people will take that responsibility.
6 If they see something, they will get it
7 collected and tell the lead investigator,
8 "Hey, this is what I found."

9 Q It is important to make sure
10 that you don't arrest somebody that hasn't
11 committed a crime, right?

12 MR. CAMPOLIETO: Objection.

13 Q You can answer.

14 A As far as like charging them or
15 taking them in custody, because some people
16 think that just because somebody is in
17 custody they are under arrest, so explain
18 that a little bit more.

19 Q Sure, we can break it down.
20 It is important to not put
21 someone under arrest without probable cause,
22 right?

23 A Correct.

24 Q It is important to make sure
25 that you have probable cause before you

1 Tomesha Angelo

2 charge them with a crime, correct?

3 A Well, if you have two people
4 that are in a disagreement and one wants the
5 other one arrested, and they sign the
6 paperwork, then they can go, especially in,
7 like, domestics.

8 Q Are you ever allowed to ignore
9 exculpatory evidence?

10 A Can you break that down?
11 Meaning what?

12 Q If there is evidence that would
13 contradict a specific complaint that somebody
14 committed a crime, are you allowed to ignore
15 that evidence?

16 A Ignore it? I would say no, but
17 sometimes you don't know about it prior so.

18 Q So the answer is no, you cannot
19 ignore it?

20 A I wouldn't. I don't know what
21 the rules are, whether you can or cannot. I
22 wouldn't.

23 Q You wouldn't because it would be
24 part of the overall totality of the
25 circumstances which is required to make a

1 Tomesha Angelo

2 probable cause determination, correct?

3 A It is just the right thing to
4 do.

5 Q Is it the lawfully required
6 thing to do, correct?

7 A Yes. You need probable cause
8 for the arrest, yes so if I can prove that
9 something didn't happen, then I would want to
10 know about it.

11 Q You have to gather all the
12 evidence that you know about, right?

13 A Yes.

14 Q All of the evidence that you
15 have access to?

16 A Yes. You are asking another
17 question or are you making a statement?

18 Q That was a question.

19 A Yes.

20 Q As an investigator, part of your
21 job is speaking to witnesses, right?

22 A Again, what kind of case are we
23 talking about? Are we talking about this
24 specific case or are we taking about in
25 general?

1 Tomesha Angelo

2 Q In general I am talking right
3 now.

4 MR. CAMPOLIETO: For this
5 case.

6 A Are we talking about this case?

7 Q I am saying in general, part of
8 your job is speaking to witnesses, right?

9 A Yes. I can speak to witnesses
10 but I don't if I am not the lead
11 investigator. I may go to a scene and not
12 speak to a witness because it is not my
13 scene.

14 Q So it is just a simple question:
15 In general, you, as part of your job, you
16 talk to witnesses, right?

17 A Yes.

18 Q Best practice would be to
19 corroborate any witness statement with
20 objective evidence, right?

21 MR. CAMPOLIETO: Objection.

22 A Again, sometimes it is really
23 difficult because you could have a witness
24 saying, "Oh my God I saw him. He was wearing
25 a blue hat," and then you look at video and

1 Tomesha Angelo

2 he wasn't, he was wearing a green a hat so
3 you can talk to a lot of people, you don't
4 necessarily talk to everybody. You don't
5 take depositions from everybody. It just
6 depends on the case.

7 Q So, in your hypothetical where
8 one person says green hat and ten people say
9 blue hat and there is a video showing a green
10 hat, that is all evidence that you can't
11 ignore, right?

12 A It is not ignoring it. I mean,
13 you don't necessarily depose everybody. You
14 can say the majority were saying this and
15 this guy said this and then it is up to a
16 judge or a jury to determine who understood
17 it correctly. It is not necessarily them
18 lying, it is just how they interpreted it or
19 it or the angle they saw it.

20 Q Let's say somebody makes a
21 specific complaint and says, "The guy that
22 did this was wearing a green hat."

23 A Okay.

24 Q And then there is a video and
25 the video shows the guy wearing a blue hat

1 Tomesha Angelo
2 and you talk to ten people who say, "Hey,
3 look, there is a guy with a blue hat, but we
4 don't know anything about him doing the
5 crime, he is just walking down the street,"
6 right? Well, that is all going to go into
7 your probable cause determination if the blue
8 hat guy is the same person as the green hat
9 guy, right?

10 MR. CAMPOLIETO: Objection.

11 A That is not enough to go on. It
12 all depends on the crime, how close he was,
13 does he match other physical descriptions.

14 Q Yes, right, all of that stuff is
15 stuff that you could consider, right?

16 A Right.

17 Q When you talk to witnesses, you
18 have to make credibility determinations,
19 right?

20 A Yes and no.

21 Q Sometimes they tell you
22 something and you are like, that is
23 ridiculous, I don't believe so?

24 MR. CAMPOLIETO: Objection.

25 A I am not like that. You just

1 Tomesha Angelo

2 never know, you just never know.

3 Q You see crazy things on the job?

4 A Yeah.

5 Q When you hear something crazy,
6 it is better to back that up with objective
7 evidence if you can, to prove or disprove
8 what that person is saying?

9 A It all really depends on the
10 crime and what is going on.

11 Q So, you know, sometimes you have
12 to determine as part of your job whether
13 somebody is telling you the truth, right?

14 A Sometimes you can't and
15 sometimes, for example, if you and your wife
16 are fighting and she is demanding you get
17 arrested because you smacked her, there is no
18 video, there is no marks on her, but she is
19 insistent, you know, you just, unfortunately,
20 have to make the arrest and let the court
21 determine who has more credibility.
22 Sometimes it is not in my hands to determine
23 who is right and who is wrong. That is not
24 my job; that is for the jury.

25 Q But if there was a video of

1 Tomesha Angelo

2 their fight that showed that the wife wasn't
3 hit, you are not allowed to ignore that
4 video, correct?

5 A You have to know about it first.

6 Q If you knew about it, you
7 wouldn't be allowed to ignore it, correct?

8 A I wouldn't ignore it.

9 Q But you are not allowed to
10 ignore it?

11 A I don't know what the rules are.

12 MR. CAMPOLIETO: Objection.

13 Q As part of the determination of
14 probable cause, you are not allowed to ignore
15 exculpatory evidence, right?

16 A Like I said, I don't know what
17 the rules and regulations on paper are. I am
18 just letting you know, I wouldn't because I'm
19 not going to send somebody to jail if they
20 didn't do it, but if I don't know about it,
21 it can happen.

22 Q Just a general principal, you
23 are not allowed to ignore exculpatory
24 question?

25 A You keep asking the same

1 Tomesha Angelo

2 questions, Dude. I don't know what the
3 general orders say as far as that. I can
4 tell you what I would do.

5 Q Do you ever have to get
6 statements from police officers as part of
7 your job?

8 A No.

9 Q But you did that in this case,
10 right?

11 A A statement? I didn't write a
12 statement from an officer.

13 Q Some officers are more reliable
14 than others, right?

15 MR. CAMPOLIETO: Objection.

16 Q You can answer.

17 A I mean, it depends on what --
18 reliable showing up on time or -- I mean I
19 guess it depends on what you are talking
20 about?

21 Q You trust the word of some
22 officers more than others; is that fair to
23 say?

24 A No. I mean if an officer tells
25 me this is what is going on, that is what is

1 Tomesha Angelo

2 going on.

3 Q There have been some officers
4 that have been determined by courts in
5 Rochester to have testified falsely
6 repeatedly, are you aware of that?

7 A Okay.

8 Q Like Hartley and Osipovitch?
9 The Democratic Chronicle did a long story
10 about how a bunch of convictions were
11 overturned?

12 A So I know the media and stuff
13 will say things about my coworkers. I don't
14 know if courts really did overturn them; I am
15 not aware of that.

16 Q If a court found, for example,
17 that Ryan Hartley had testified falsely
18 leading to convictions in cases that he
19 worked on to be overturned, would that be
20 something that he would be disciplined for
21 within RPD?

22 A I don't know.

23 Q You don't know?

24 A No.

25 Q If you were aware that Ryan

1 Tomesha Angelo

2 Hartley had testified falsely about certain
3 crimes that he investigated, and then you
4 later got a report from him, would you look
5 at that a little more sceptically than a
6 report from another officer that you trusted?

7 A Probably not because if it were
8 instances where something happened and -- if
9 it was bad enough they, I am assuming, they
10 would have fired him so obviously he is still
11 good to be a police officer, so, no, I am
12 still going to trust his reports at that
13 point.

14 Q So you trust all of the police
15 officers that work with you equally?

16 A Yes. Now, just like I said
17 before, you know, obviously officers, they
18 are human too and if something is -- if it
19 was -- he is claiming it was a green hat and
20 it is really a black hat, obviously I am
21 going to understand that, but as far as far
22 as just flat out lying in a report, I
23 wouldn't think that.

24 Q If other officers that you
25 worked with told you one thing and there was

1 Tomesha Angelo

2 a video that contradicted what they said,
3 would you trust what they said or would you
4 trust the video?

5 A Well, you have to give
6 credibility to both because the video only
7 shows a little bit of what is going on and
8 some videos don't have audio and you don't
9 know what is happening outside of the scope
10 of the video, so you have to take -- you have
11 to take everything with a grain of salt and
12 luckily I am not Judge or jury and that is
13 not my decision.

14 Q Your job as an investigator is
15 to be impartial and fair, right?

16 A To the best of my ability.

17 Q To not be the Judge or jury, and
18 that requires you to review all of the
19 evidence and give it proper weight?

20 A It depends on if I am the lead
21 investigator or what is going on. Just
22 because I am an investigator and I show up on
23 the scene, it doesn't mean it is my scene.

24 Q Is it important that you
25 document everything that you do, correct?

1 Tomesha Angelo

2 A I am very good at documenting,
3 yes.

4 Q Does the RPD require that you
5 carry around a little notebook to take notes
6 in?

7 A No, not required.

8 Q For example, I don't know if you
9 are aware, the New York City Police
10 Department requires all officers to carry
11 what is called a memo book and document their
12 activities throughout the day. The RPD
13 doesn't have a similar requirements?

14 A No.

15 Q Are you required in some other
16 way to document your activities throughout
17 the day?

18 A No.

19 Q You are not required to
20 document, for example, if you showed up to a
21 scene, every person that you spoke with?

22 A No.

23 Q Is that something that you do?
24 You mention that you are very good at
25 documenting, is that a personal practice of

1 Tomesha Angelo

2 yours?

3 A Yes.

4 Q I'm sorry. I can't hear you.

5 A Yes.

6 Q Where do you do that?

7 A What do you mean?

8 Q Do you have a note pad or do you
9 do it by hand?

10 A A note pad, but I don't always
11 write everything in the note pad, but it will
12 be in my report.

13 Q Where do you keep your note pad?

14 A Like, on my person?

15 Q I want to get your reports from
16 this case, from your note pad, where would
17 that be?

18 A Wait, you want to get the
19 information in the note pad regarding this
20 case?

21 Q Right, if I wanted all of your
22 handwritten notes, where are your handwritten
23 notes stored?

24 A I supply them.

25 Q You what?

1 Tomesha Angelo

2 A I supply them in the arrest
3 package, a copy of them.

4 Q So you would take out your
5 handwritten notes and put them in the arrest
6 package?

7 A Sometimes we would put them in
8 evidence and then we got into the practice of
9 copying them and putting copies and now that
10 we -- the officers have bodycams, they take
11 pictures of them and put them into the C.3 so
12 a lot has changed over the last few years how
13 we keep our notes.

14 Q Do you save your original
15 handwritten notes?

16 A Yes, I do. If they are not in
17 evidence, then I have them.

18 Q When you say you have them, at
19 your home?

20 A Or at the office, depends on the
21 notebook.

22 Q As an investigator, do you have
23 an office at PSD?

24 A No.

25 Q When you say you keep them at

1 Tomesha Angelo

2 the office, what do you mean?

3 A I have a locker at the public
4 safety building, but my desk is not at the
5 public safety building.

6 Q Where is your desk?

7 A Bivona, B-I-V-O-N-A.

8 Q Do you keep your notes in your
9 locker or do you keep your notes at your desk
10 in Bivona?

11 A It depends on the note pad. The
12 last couple of note pads I will keep at my
13 desk the old ones I will either keep them in
14 my locker or sometimes I have storage in my
15 attic.

16 Q As part of this case, did John
17 ever ask you for a copy of your note from
18 this case?

19 A He has a copy of my note from
20 this case.

21 MR. SHIELDS: John to the
22 extent I don't have them, I
23 would request production of
24 those notes.

25 MR. CAMPOLIETO: We sent

1 Tomesha Angelo
2 them in the Rule 26 Disclosures.
3 There are two pages of them.

4 I think they are numbers 103
5 and 102.

6 Q Do you know if you gave those
7 notes to the District Attorney?

8 A It would have been in the
9 package.

10 MR. CAMPOLIETO: This is
11 just one page. This is one
12 page, 103. There is one page
13 103 with two copied note pages.

14 MR. SHIELDS: For the
15 record, I am going to put this
16 up, it is going to mess up all
17 my other numbers that I predate.
18 I will do this as Exhibit 1.

19 (Handwritten notes were
20 marked as Plaintiff's Exhibit 1
21 for identification, as of this
22 date.)

23 Q Investigator, on your screen do
24 you see these two, they look like spiral
25 notebook copies on this one page that is

1 Tomesha Angelo

2 marked at the bottom COR103?

3 A Yes.

4 Q I will try to see if I can zoom
5 in.

6 So it looks like what you wrote
7 down is basically the witness' name, Dawan?

8 A Yes.

9 Q The location, his birthday, his
10 phone number.

11 Is this A&Z South Market, is
12 that what it says?

13 A Yes.

14 Q It says, left pinky?

15 A Yes.

16 Q And then John put his stamp on
17 the middle so it is a little hard to read the
18 rest of it. I think it says Rafeq Zayed. He
19 is another witness?

20 A I don't remember who that guy
21 is.

22 Q In general, what is the type of
23 stuff that you would write down in these
24 notes?

25 A Again, that would depend on the

1 Tomesha Angelo

2 case, but if you want to talk about this
3 case, obviously I was asked to talk to or
4 take a deposition from the witness so that is
5 why the witness is first in my book; that was
6 the first thing that I did.

7 Obviously, I had to get all of
8 his pedigree information, where it happened.
9 The name of the store is A&Z. He is injured
10 on his left pinky. This is over ten -- that
11 was a pain level. I asked him what was pain
12 scale from one to ten and he said over ten.

13 Q Okay.

14 A I don't remember who Rafeq is
15 and then the name of the guy in the back of
16 the car. I don't even have his date of birth
17 on here and then the other note pad would
18 have been what I was asked to charge him
19 with.

20 Q What is 16F, right here, mean?

21 A Where are you looking? Oh,
22 apartment number.

23 Q When you say you were tasked
24 with charging him, someone told you the
25 charges to press?

1 Tomesha Angelo

2 A Well, I would talk to the
3 officer. I would talk to somebody that is at
4 the hospital and say, "What are the injuries
5 of the officers?" And then I would have to
6 look them up in the book and because the
7 officers are at the hospital, they can't
8 draft these reports so I had to draft it for
9 them.

10 The charges would have been
11 based on what I was told their injuries are
12 and what I was told happened in their
13 investigation as well as whatever the
14 deposition I took from the other guy.

15 Q I will get back to that in a
16 second.

17 When you showed up at the scene,
18 there were numerous witnesses at the scene,
19 right?

20 A I only talked to one.

21 Q You only talked to one.

22 A I don't know how many others
23 there were or who talked to them.

24 Q If you were the lead
25 investigator on the case, would you have

1 Tomesha Angelo

2 talked to all of the different witnesses on
3 the scene?

4 A It depends on what their
5 involvement was, what they saw. It just
6 depends. Sometimes officers will, for lack
7 of a better term, triage and talk to these
8 people and find out what do they have and
9 come back to an investigator and say, "Hey
10 this one we heard screaming." This one we
11 heard from a person that was walking by and
12 then that will point us in the right
13 direction as to who to talk to at a scene,
14 not necessarily do we talk to everybody.
15 Sometimes officers help us out. It just
16 depends on the scene.

17 Q If the officers did talk to
18 other witnesses, that should be documented
19 somewhere?

20 A Who knows. It depends on what
21 the crime is; it depends on what they had to
22 say. Sometimes they do; sometimes they
23 don't.

24 Q So here the people that you
25 spoke with were the one deposition that you

1 Tomesha Angelo

2 took and the police officers?

3 A I believe I talked to them
4 directly regarding what happened. As far as
5 their injuries, I don't know if they told me
6 or if the officer that was tasked to be up
7 there told me. I did end up talking to the
8 officers once they came back to the office.

9 Q Did you talk to them before you
10 wrote their felony complaints?

11 A Yes, and the video because I got
12 the video and I saw it at the office with the
13 officers.

14 Q How did you get the video?

15 A I had asked the technician to
16 collect it.

17 Q That would have been Stephanie
18 Febrezio, now Stephanie Mentz?

19 A Yes, and she collected it
20 however she collected it and put it on a CD
21 for me.

22 Q What did you tell Stephanie to
23 collect?

24 A Just the video.

25 Q What were your instructions that

1 Tomesha Angelo

2 you gave her?

3 A I don't recall giving her
4 instructions because I hadn't seen the video,
5 so I couldn't say, "Collect from this time to
6 this time." I just said, "Collect the
7 video." I know there were issues. They had
8 to call somebody down there from the store.

9 Q So if Stephanie testified that
10 you told her to collect the video from a
11 specific time to a specific time, she was
12 lying?

13 A Not necessarily. I don't recall
14 giving her a time. I don't have times
15 written down in my notebook so unless it was
16 from the time of the call to whatever time
17 the first officer -- or the call that they
18 were in distress, I don't know.

19 Q It is possible that you told her
20 to collect from a specific time to a specific
21 time?

22 A Yes, it is possible, but I don't
23 recall that.

24 Q You don't recall what those
25 times were?

1 Tomesha Angelo

2 A No.

3 Q And you don't recall how you
4 made that determination?

5 A I wouldn't know. Other than
6 from when the officer's time of the job until
7 whenever the officers called out. I wouldn't
8 know how to pick a time other than that.

9 Q Let's go through some other
10 stuff. Maybe we'll come back to that.

11 Did you ever speak to my client,
12 David Van?

13 A No.

14 Q What was his condition when you
15 arrived on the scene?

16 A He was in the patrol car being
17 very combative.

18 Q I am going to put up some
19 exhibits. If I can figure out this
20 technology that was working yesterday.

21 MR. SHIELDS: I will share
22 my screen. This will be Exhibit
23 2.

24 (Still shot from a news clip
25 was marked as Plaintiff's

1 Tomesha Angelo

2 Exhibit 2 for identification, as
3 of this date.)

4 Q Does that look like my client to
5 you, investigator?

6 A I don't know what your client
7 looks like.

8 Q I am sorry?

9 A I don't know what your client
10 looks like.

11 Q So, in general, can you tell me
12 what is depicted in this picture?

13 A It looks like possibly a male
14 sitting and it looks like either a doctor, a
15 nurse or possibly EMT holding their head.

16 Q So there are three pictures in
17 this Exhibit 2. I will go to the second
18 picture. It's a similar picture, right, with
19 the EMT?

20 A Okay.

21 Q Is that fair to say?

22 A It must be a paramedic or EMT.
23 They are wearing a badge and doctors and
24 nurses don't wear a badge.

25 Q What does it look like she might

1 Tomesha Angelo

2 be doing, can you tell?

3 A Checking an eye.

4 Q Do you know when paramedics

5 might check somebody's eye?

6 A It could be a number of reasons.

7 Q If they had head trauma?

8 A What?

9 Q If they have head trauma?

10 A Head trauma, I am not a doctor.

11 I don't know.

12 Q Have you ever responded to a

13 scene where someone has a head injury?

14 A Yes.

15 Q Is one of things they might do

16 to see if they have a concussion is to check

17 their eyes?

18 A I don't know.

19 Q How about this third picture,

20 what do you see depicted here?

21 A The EMT with the hand on the
22 head and I don't know what she is looking at.

23 Q Does she look like she is

24 looking at my client?

25 A Either the chin, the neck, the

1 Tomesha Angelo

2 chest. I don't know what he is looking at.

3 Q She is looking at his body?

4 A Okay. I don't know.

5 Q It is fair to say?

6 A I don't want to say the body.

7 Q She is looking at him?

8 A Yes. Looking at him, yes.

9 Q Does it look like his eyes are
10 open?

11 A No. It does not look like his
12 eyes are open.

13 Q I will take that one down and
14 put up what will be Exhibit 3.

15 (Photograph was premarked as
16 Plaintiff's Exhibit 3 for
17 identification, as of this
18 date.)

19 Q Investigator, do you see a
20 picture of a man with his eyes closed?

21 A Yes.

22 Q Do you recognize him at all?

23 A No.

24 Q If I represent to you that is my
25 client Dave Van, I will tell you that because

1 Tomesha Angelo

2 there will be a few more pictures of him, all
3 right?

4 A All right.

5 Q This glove, is that the type of
6 glove officers wear?

7 A Sometimes.

8 Q Do you think that is probably an
9 officer holding his shoulder?

10 A A lot of the EMTs and stuff like
11 that all also wear gloves like that. I just
12 don't know if that is an EMT. It is
13 possible.

14 Q Do you see the big cut on the
15 side of his face right here?

16 MR. CAMPOLIETO: Objection.

17 A I wouldn't call it big, but yes,
18 there is a cut.

19 Q Do his eyes look like they are
20 open or closed?

21 A Closed.

22 Q Does it look like he has other
23 scrapes on his head also?

24 A I don't know if they are scrapes
25 or from shaving his head, but he has red

1 Tomesha Angelo

2 marks. Can I say that?

3 Q He has other red marks on the
4 side of his face as this cut right here?

5 A Yes.

6 MR. CAMPOLIETO: Can we take
7 a three minute pause?

8 MR. SHIELDS: Three minutes?

9 MR. CAMPOLIETO: Yes. Three
10 minutes. I have a quick thing
11 if you don't mind.

12 MR. SHIELDS: Off the
13 record.

14 (A discussion was held off
15 the record.)

16 (A brief recess was taken.)

17 Q I will move on and show you a
18 few more pictures, okay?

19 A Yes.

20 Q I will share my screen again.

21 (Photograph was marked as
22 Plaintiff's Exhibit 4 for
23 identification, as of this
24 date.)

25 Q Investigator, do you see a

1 Tomesha Angelo

2 picture of my client seated in the back of a
3 RPD vehicle?

4 A Yes.

5 Q Are his arms behind his back?

6 A One is.

7 Q Do you see his other fingers
8 here?

9 A Yes. The other one is on his
10 side.

11 Q So that would be one arm right,
12 and the second arm right here?

13 A Yes.

14 Q Does he look like he is being
15 combative in this picture?

16 A I don't know. It is a picture;
17 it doesn't show motion and his eyes are
18 closed.

19 Q Is there an officer that is
20 looking like he is calmly standing besides
21 him?

22 MR. CAMPOLIETO: Objection.

23 A I don't know who that is.

24 Q Do you see a cord right here and
25 some tattoos? It doesn't look like the

1 Tomesha Angelo

2 officer is doing much to have to hold him up,
3 right? Stop him from fighting or anything?

4 A You can't tell that from a
5 picture.

6 Q Are his eyes closed?

7 A Yes.

8 MR. SHIELDS: What I want to
9 do is, I am going to share my
10 screen again and I am going to
11 play the video that was marked
12 as Exhibit 2 at yesterday's
13 deposition. So, we don't need
14 to re-mark it for this one.
15 Just note for the record, that
16 yesterday it was marked as
17 Exhibit 2.

18 MR. CAMPOLIETO: What was it
19 marked? I don't recall it being
20 marked. If you want, we can go
21 back and do it. That is fine.

22 MR. SHIELDS: I don't know
23 what the common practice is for
24 -- obviously, it is going to be
25 in the one record. It will be

1 Tomesha Angelo

2 on this video.

3 MR. CAMPOLIETO: We can
4 consider it Exhibit 2 from
5 yesterday, that is fine.

6 Q Investigator, we have this video
7 paused. This is camera four, paused at
8 10:30. On the video, on the bottom left it
9 says 11:43:46 on the top right.

10 Investigator, just looking at
11 the pause portion of this video, is this a
12 video that you have previously seen before?

13 A Yes.

14 Q When did you see this video
15 previously?

16 A I saw it today and I saw a video
17 the day it happened but I don't remember
18 anything about it. It was so long ago.

19 Q I am going to play the video, if
20 you can try to pay attention to my client and
21 then I will ask you some questions about the
22 video, okay?

23 A Okay.

24 MR. SHIELDS: I played to
25 the end. I know we had a

1 Tomesha Angelo
2 problem yesterday with the video
3 being on the screen. Is that
4 what she is referring to?

5 MR. CAMPOLIETO: I will try
6 to fix it.

7 Q So, investigator, were you not
8 able to see my client throughout the entire
9 video?

10 A No. He was behind some windows
11 of ours.

12 Q So let me try to do that again.
13 Hopefully it will be a little less choppy,
14 let's see.

15 A You just want me focusing on him
16 right now?

17 Q Yes.

18 MR. SHIELDS: I will pause
19 to see if it will stop being as
20 choppy and then restart it.

21 Q I will pause it and ask a
22 question. This right here, is that LaFave?

23 A Yes.

24 Q Is that Dempsey?

25 A Yes.

1 Tomesha Angelo

2 Q Is that Mitchell, if you can
3 tell?

4 A It kind of looks like it because
5 he is bald, but it is too far away.

6 Q Brodsky testified yesterday that
7 that he is him, so.

8 A Okay.

9 Q Is this the individual who you
10 took the deposition from the store?

11 A I don't remember what he looked
12 like. I'm sorry.

13 Q I will stop sharing that. Were
14 you able to see my client throughout that
15 video at that time?

16 A Yes.

17 Q Did he look like he was being
18 combative and fighting with the officers?

19 A Yes.

20 Q He did?

21 A Yes.

22 Q I guess that is what you saw.
23 Did you see him have to get picked up to his
24 feet?

25 A Yes.

1 Tomesha Angelo

2 Q What are the reasons that
3 officers might have to pick someone up with
4 their feet?

5 A If people refuse to get up and
6 sometimes they can resist by, like, passive
7 resistance where they just lay there or not
8 get up or tighten their arm.

9 Q Or if they are physically unable
10 to, correct, that would be another reason?

11 A To resist? That is not another
12 reason to resist.

13 Q A reason that the officers might
14 have to pick someone up to their feet could
15 be that they are physically unable to stand
16 up on their own, correct?

17 A Yes.

18 (Photograph was marked as
19 Plaintiff's Exhibit 5 for
20 identification, as of this
21 date.)

22 Q Investigator, do you see this
23 picture?

24 A Okay.

25 Q I will represent to you that

1 Tomesha Angelo

2 that is my client's mug shot?

3 A Okay.

4 Q And, is there anything that

5 jumps out to you about this mug shot?

6 A I have seen a lot of mug shots,

7 you are going to have to be more specific.

8 Q Are my client's eyes closed?

9 A They are closed but there are
10 many reasons why they could be closed. He
11 could be refusing to look at the camera. He
12 could have been pepper sprayed. There are a
13 number of reasons why.

14 Q And his eyes were closed in all
15 the previous pictures that we looked at when
16 he was in the back of the car, right?

17 A Yes.

18 Q Do you know if he was pepper
19 sprayed?

20 A I do not know.

21 Q You said you never spoke with my
22 client, right?

23 A Right.

24 Q You said it was because he was
25 being combative?

1 Tomesha Angelo

2 A Yes.

3 Q Could another reason have been
4 because he was physically unable to speak
5 with you?

6 A From what I remember, he was
7 screaming in the back seat and kicking.

8 Q Would that be a common reaction
9 from someone who had just been assaulted and
10 beat up and pepper sprayed in the face by
11 point blank range?

12 A There are a number of reasons
13 why people do that.

14 Q So the answer would be yes,
15 could be?

16 A I answered it. I don't know
17 what this specific one was, but there are a
18 number of reasons people do that.

19 Q I asked you if one of the
20 reasons could be those things and you said a
21 bunch of stuff and I asked you if your answer
22 is yes?

23 A Say the things again.

24 Q One reason that somebody could
25 be upset in the back seat of a police car is

1 Tomesha Angelo

2 because they were just assaulted by the
3 police, correct?

4 A Their interpretation of being
5 assaulted.

6 Q Sure.

7 A Yes.

8 Q If someone was in physical pain
9 that could be one reason why they would be
10 upset, correct?

11 A Upset or screaming and trying to
12 kick out a window.

13 Q Sure. Upset in however way they
14 are showing their being upset?

15 A I have never seen it like that,
16 but sure, anything is possible.

17 Q Did my client kick out the
18 window?

19 A No. I believe Brodsky addressed
20 that.

21 Q How did Brodsky address that?

22 A If I remember correctly, he
23 opened the door and yelled at him.

24 Q So, the same guy that we saw get
25 dragged to the car with his eyes closed in

1 Tomesha Angelo

2 all the pictures also tried to kick out the
3 window?

4 A He was either trying to kick it
5 or use his head. I don't remember. I just
6 remember the banging and I remember the car
7 shaking.

8 Q So he beat himself up?

9 A I didn't say that.

10 MR. SHIELDS: Please mark
11 this.

12 (Rochester Police Department
13 Action Report was marked as
14 Plaintiff's Exhibit 6 for
15 identification, as of this
16 date.)

17 Q Let's put up the next exhibit,
18 Exhibit 6.

19 Do you see the investigative
20 action report on the scene?

21 A Yes.

22 Q At the bottom here, is it your
23 name, right?

24 A Yes.

25 Q It is dated September 5, 2015?

1 Tomesha Angelo

2 A Yes.

3 Q So basically, did you review
4 this before your deposition today?

5 A Yes.

6 Q It says you showed up, you
7 talked with (V1) Algazall and (W) Zayed; is
8 that correct?

9 A Okay.

10 Q It said why he called 911. It
11 says, "A comes into the store every day
12 giving them a hard time. He became
13 aggressive and then (V1) decided to
14 physically remove him from the store."
15 Right?

16 A That is what he told me, yes.

17 Q And it says, "See his deposition
18 for further details." Right?

19 A Yes.

20 Q Then he complained about his
21 pinky hurting and pain in his finger, right?

22 A Yes.

23 Q (W) stated he was inside when
24 the officers arrived, and told you the store
25 had cameras, right?

1 Tomesha Angelo

2 A Yes.

3 Q (W) called someone to make a
4 copy, but he stated that he did not have
5 anything to copy it to. Fabrizio was on
6 scene to help him make a copy so Stephanie
7 made the copy and turned it into the property
8 clerk, right?

9 A Yes.

10 MR. SHIELDS: John, if you
11 are going to say stuff, you have
12 to do it loud and on camera.

13 MR. CAMPOLIETO: I don't
14 know what you are talking about.

15 MR. SHIELDS: It looked like
16 she was looking at you.

17 MR. CAMPOLIETO: Her report
18 is here. You will hear me talk
19 if I talk.

20 MR. SHIELDS: Okay.

21 Q Then it says you completed the
22 information for Kester and Drake to sign,
23 right?

24 A Yes.

25 Q Then it says you called (V1) the

1 Tomesha Angelo

2 next day to see how his finger was feeling
3 and he said he thought he broke it, towards
4 the end of his finger. He was going to
5 follow up with a specialist, right?

6 A Yes.

7 Q The he rated his pain ten out of
8 ten?

9 A Yes.

10 Q So other than this and your
11 handwritten notes, do you have any other
12 notes about any of the conversations that you
13 had with either the witness, Zayed, the
14 victim, Algazall or Kester or Drake?

15 A Say that again.

16 Q Do you have any additional notes
17 about the substance of your conversations
18 with Drake, Kester, Zayed or Algazall?

19 A No.

20 Q No?

21 A No.

22 Q Do you have any notes anywhere
23 about my client allegedly trying to kick out
24 the window of the police car?

25 A No.

1 Tomesha Angelo

2 Q Did you ever tell anybody that
3 previously?

4 A Who would I tell?

5 Q I don't know. Is that a crime
6 to try to break out the window in the police
7 car?

8 A I mean that would be an
9 attempted criminal mischief, but it is kind
10 of a -- he didn't actually do it. He was
11 warned and stopped.

12 Q He could have been charged with
13 a crime for that?

14 A Yes.

15 Q But he wasn't?

16 A No.

17 Q You said you spoke to Mitchell
18 on the night of the incident?

19 A I think so, yes.

20 Q Where did you speak with him on
21 the night of the incident?

22 A I can't remember if he was the
23 officer up at the hospital or not.

24 Q When you say, "If he was the
25 officer up at the hospital or not," what do

1 Tomesha Angelo

2 you mean?

3 A There would always be an officer
4 with injured officers.

5 Q So you are not sure if Mitchell
6 went to the hospital with Drake and/or
7 Kester?

8 A No.

9 Q Did you go to the hospital on
10 the night of the incident and speak with
11 Drake or Kester?

12 A No.

13 Q So the conversation with
14 Mitchell on the night of the incident would
15 not have happened at the hospital?

16 A No, not that I am aware of. I
17 don't recall going to the hospital at all.
18 They may be the phone, but I don't recall
19 going to the hospital. I needed to know the
20 extent of the injuries of the officers so I
21 don't know if it was me or Sarge or whoever
22 called the officers up there.

23 Q You remember speaking with
24 Kestler at some point, right?

25 A I am going to say no, I don't

1 Tomesha Angelo

2 remember because I am not sure that it was
3 me. I don't know if it was me or Sarge.

4 Q I missed that. You don't
5 remember speaking to Mitchell?

6 A No.

7 Q But you do remember speaking to
8 Drake?

9 A I definitely remember Kester
10 back at the office, and we watched the video.
11 I am trying to remember if Drake was there
12 too or if that -- if it was at two different
13 times because I don't know if they got
14 discharged at the same time, but I would have
15 had to speak with them to make sure that the
16 information was accurate because if they
17 weren't, I would have had to fix them before
18 they signed them. So at some point I would
19 have had to talk to them.

20 Q At some point you talked to them
21 before they signed the informations.

22 A Yes.

23 Q Let's look at their information.

24 MR. CAMPOLIETO: So this
25 will be Exhibit 7.

1 Tomesha Angelo
2 (Officer Drake's Felony
3 Complaint was marked as
4 Plaintiff's Exhibit 7 for
5 identification, as of this
6 date.)

7 Q "I, officer Matthew Drake." You
8 see at the bottom it says September 5, 2015,
9 Officer Matthew Drake?

10 A It is really blurry, but that is
11 what it looks like.

12 Q It doesn't look really blurry on
13 my screen. Is it your computer? Does
14 everything look blurry today?

15 A We have it smaller so your
16 pictures are --

17 Q How about if I make it a little
18 bigger; is that better?

19 A Yes.

20 Q Is this the information that you
21 drafted for Officer Drake?

22 A Yes.

23 Q When you drafted it the first
24 time, had you spoken to him prior to drafting
25 it?

1 Tomesha Angelo

2 A I don't know if I spoke to him
3 prior to drafting it. Either I talked to
4 somebody at the hospital, meaning an officer,
5 or Sarge did and relayed the injuries so I
6 knew what to write there.

7 I would have at least started
8 this. I don't know how far I got before
9 talking to them, but obviously if they needed
10 something, I would have changed it.

11 Q So, you drafted it. Maybe you
12 talked to him beforehand, maybe you didn't,
13 and then before he signed it, you said that
14 you talked to him, right?

15 A Yes.

16 Q When you talked to him before
17 you signed it, did you do that in person or
18 on the phone or something else?

19 A That, I don't remember.

20 Q So you drafted it and he signed
21 it, right?

22 A Yes.

23 Q "The defendant fell on top of
24 Officer Jeffrey Kester breaking his right
25 fibula bone. Officer Kester's pain level was

1 Tomesha Angelo
2 an eight out of ten. The defendant continued
3 to resist officer's lawful arrest by
4 continuing to twist and pull away. The
5 defendant 's actions forced the officers to
6 bring him to the sidewalk to get him under
7 control.

8 "While going to the ground, your
9 complaintant dislocated his right shoulder
10 causing a pain level of eight out of ten.
11 All officers were on duty and in full
12 uniform."

13 Do you know where you got those
14 facts from before you drafted that?

15 A I would have gotten facts from
16 either Sarge, the officers themselves, the
17 video and then confirmed that the information
18 was correct before they signed it.

19 Q How did you confirm that the
20 information was correct?

21 A By them reading it and signing
22 it.

23 Q So you asked the officers if
24 that was correct?

25 A Yes.

1 Tomesha Angelo

2 Q Did you do anything else to make
3 an independent determination if all of that
4 was accurate?

5 A No, if they told me to change
6 something, I would have changed it. I was
7 not there.

8 Q So you didn't have personal
9 knowledge so you couldn't contradict them?

10 A Correct.

11 Q Even if the video contradicted
12 what they told you?

13 A The video is very, how do I say,
14 one dimensional. There is more than video;
15 you can't just go by video.

16 Q Sure.

17 But if the video contradicted
18 it, what would you do?

19 A Are we taking this case or in
20 general?

21 Q Yes, in general. I will say
22 specifically here if I am referring to
23 specifically here.

24 If someone tells you something
25 and that thing they told you is contradicted

1 Tomesha Angelo

2 by a video, do you go with the video or do
3 you go with the statement?

4 A If they tell me this, they are
5 the ones that have to sign it. I'm not going
6 to put my words into it. If they want their
7 words into it, that is what they are putting.
8 That is what I am going to draft and that is
9 what I am going to sign. And if there is
10 contradiction in your eyes, that is for a
11 jury or a Judge.

12 Q And a jury did make a
13 determination on that, right?

14 A I don't know. I was not there.
15 I didn't know anything about this case until
16 I got served.

17 Q But Kester told you the jury
18 dismissed the charges?

19 A I don't know what his exact
20 words were, but sum and substance, yes.

21 Q It went to trial and Kester
22 testified, are you aware of that?

23 A No, I'm not aware of that.

24 Q I will represent to you it went
25 to trial, Kester testified, Drake testified,

1 Tomesha Angelo

2 Fabrizio, Stephanie Mentz testified and after
3 hearing that testimony and watching the
4 videos, the jury dismissed all charges
5 against my client.

6 A Okay.

7 MR. SHIELDS: I'm going to,
8 for the record, put up Kester's
9 Felony Complaint. This will be
10 Exhibit 8.

11 (Officer Kester's Felony
12 Complaint was marked as
13 Plaintiff's Exhibit 8 for
14 identification, as of this
15 date.)

16 Q Do you see on your screen a
17 Felony complaint, investigator?

18 A Yes.

19 Q I am going to go to the bottom.
20 This says, September 5, 2015, Officer Jeffrey
21 Kester; is that correct?

22 A Yes.

23 Q When you went over the complaint
24 with Drake that we put up previously, as
25 Exhibit 7, did Drake have any changes for you

1 Tomesha Angelo

2 to make to it?

3 A I don't remember that. If he
4 did, I would have changed them.

5 Q You don't remember if you had
6 multiple drafts of the complaint or not,
7 correct?

8 A I don't remember that.

9 Q If you did have multiple
10 complaints and you make changes to it, is
11 that saved on your computer?

12 A It would be up on my computer.
13 It is not like I would print them out.

14 Q So, for example, if you did make
15 changes to the first draft after you spoke
16 with Drake, would you have copies of both the
17 original first draft and the edited second
18 draft?

19 A No, it was still a work in
20 progress, so it is not like it was complete
21 or finished.

22 Q So, for example, some people
23 have multiple versions of different documents
24 with different names?

25 A Okay.

1 Tomesha Angelo

2 Q You don't do that?

3 A I don't do that.

4 Q You go right in to the same
5 document and make the edits there?

6 A Yes.

7 Q Do you remember where you
8 drafted these complaints?

9 A It would have been at my office
10 which was the Central Section Office.

11 Q Do you have a different computer
12 today?

13 A Yes.

14 Q You don't have the same computer
15 that you drafted these on?

16 A No. When you change buildings,
17 you change computers.

18 Q Do you have the same files?
19 Would you have copies of these on your
20 computer?

21 A I don't know because if I had a
22 similar in incident, I would have changed the
23 names.

24 Q There is a form that you use?

25 A Yes, is it like a template. So

1 Tomesha Angelo

2 I would have changed the names and then
3 changed the narrative if I had another
4 incident that had these charges.

5 Q Do you have a David Van folder
6 where you would have saved different
7 documents for different incidents? Maybe you
8 are saving an arrest number or something?

9 A I am sorry? Say that again.

10 Q For different cases that you
11 work on, do you set up different case folders
12 where you save documents?

13 A Yes.

14 Q On your computer would you have
15 a case folder for this case?

16 A No, not on my computer. So we
17 store the reports. We used to store paper
18 reports so those would have been at the
19 Central Section Office and then they end up
20 going to archives somewhere, but then we
21 started saving things electronically so these
22 packages would be scanned into a program and
23 the originals would go to the District
24 Attorney's Office.

25 Q What is the name of that

1 Tomesha Angelo

2 program?

3 A LERMS, it's an acronym. Don't
4 ask me what it stands for because I don't
5 know.

6 Q With LERMS do you put your
7 handwritten notes in there to?

8 A A copy of the package would be
9 put in, so my notes would be in the scanned
10 package, yes.

11 Q Going back to this exhibit that
12 we're going to mark as Exhibit 8 which is
13 Kester's Felony Complaint, do you remember
14 drafting this?

15 A I remember that I did draft it.
16 I don't remember the conversation that I had
17 with him.

18 Q Like Drake, do you remember
19 anything about whether you talked to him
20 before you drafted it versus if you only
21 spoke to him after you drafted it?

22 A No, I don't recall that. As
23 long as they said that whatever I wrote was a
24 true and accurate representation then that is
25 what they said.

1 Tomesha Angelo

2 Q Did you watch the video before
3 you drafted it?

4 A Before I drafted it, I don't
5 know.

6 Q Did you watch the video on the
7 night of the incident?

8 A Yes. It was late at night so I
9 couldn't tell you if it was the next morning
10 or it would have been the same -- I would
11 have still been working on it, had the date
12 changed.

13 Q It happened close to midnight so
14 you probably watched it on September 5?

15 A I am assuming September 5, yes.

16 Q When you drafted this and when
17 he signed it, it was true and accurate to
18 your knowledge?

19 A Yes.

20 Q Based on watching the video and
21 speaking to Kester?

22 A Not only speaking to Kester but
23 officers there and Drake and the totality,
24 and if they wanted me to change anything, I
25 would have changed it. This is their words.

1 Tomesha Angelo

2 Q It is their words that you wrote
3 up for them?

4 A Yes. I just drafted them for
5 them. It is their information; it is their
6 paperwork. I just helped them write it
7 because they were injured.

8 MR. SHIELDS: I will mark
9 this Exhibit 9.

10 (Deposition of
11 Dawan Algazall was marked as
12 Plaintiff's Exhibit 9 for
13 identification, as of this
14 date.)

15 Q Now, I will put up what will be
16 Exhibit 9. This is the deposition of DA (W)
17 Algazall. This is the one that you took. Do
18 you remember?

19 A That? Yes.

20 Q Do you know, here at the bottom,
21 is that your signature right there?

22 A Yes.

23 Q Did you read this today before
24 the deposition?

25 A I skimmed over it.

1 Tomesha Angelo

2 Q So is this your handwriting or
3 is this his handwriting?

4 A Mine.

5 Q So you wrote out this deposition
6 by hand?

7 A Yes.

8 Q After you spoke with him?

9 A He was standing -- we wrote this
10 on the garbage can that was next to the car
11 your client was in, that is how I know he was
12 trashing around in there. He was standing
13 next to me as I was writing.

14 Q So he is standing next to you,
15 you are writing on the garbage can and had
16 you watched the video before you wrote this
17 out?

18 A No.

19 Q So, he said, "My name is Dawan
20 Algazall. I'm 28 years old -- is that a
21 nine?

22 A Nine.

23 Q "Twenty-nine years old. On
24 9/5/15, around 11:20 p.m., I had my coworker,
25 Rafeq, call 911 for me. We had a guy come

1 Tomesha Angelo

2 into our store, A&Z South Market and harassed
3 Rafeq to try to sell him a beer without his
4 ID. We refused and asked him multiple times
5 to leave. He was in our store like 30
6 minutes. He got very mad at me and started
7 to get nasty. I finally had enough and
8 physically pushed him out our back door and
9 locked it. Before I had to run to the front
10 he ran into our store. That is when I had
11 Rafeq call 911. The cops came quick. The
12 guy was standing just inside our front door
13 refusing to leave. The cops were real nice
14 and tried to get him to leave. The guys got
15 in one of the officer's face. The officer
16 warned him but he went after the officer
17 again. The officers went to handcuff him and
18 he began to fight the officers. He was
19 thrashing and refused to keep his hand behind
20 his back. The officers yelled over and over,
21 'Stop resisting, put your hands behind your
22 back.'"

23 And then you crossed out. It
24 said, "They even threatened to spray him,"
25 but then you crossed it out.

1 Tomesha Angelo

2 "The guy continued to fight. He
3 was fighting so bad he caused everyone to
4 fall onto the sidewalk. The guy fell on the
5 officer, hurting the officer's ankle.
6 Another officer got him handcuffed and walked
7 him to the car. He tried to search the guy,
8 but he just wouldn't stop fighting even in
9 handcuffs.

10 "Another officer arrived and
11 that made the guy fight and resist more.
12 They fought so much, they ended up back on
13 the sidewalk near the store. That is where
14 the second officer got hurt. I couldn't tell
15 a what he hurt, but..." What does that say
16 there?

17 A That is his initials also. We
18 have everyone initial the last sentence.

19 Q "But he was in a lot of pain and
20 couldn't move and I tried to jump in and
21 help, but the officers told me to stay back.

22 "Like, five more officers showed
23 up. They were all yelling commands to him,
24 but he was still fighting. He was even
25 fighting once he was in the back of the car.

1 Tomesha Angelo

2 That is when they threatened to spray him. I
3 am so thankful the officers came. I do not
4 feel they were inappropriate whatsoever.
5 They gave him more than enough chances to
6 cooperate. This guy comes into our store
7 every day causing problems but I don't know
8 his name. I do know he lives across the
9 street, 500 South Avenue. He is a black
10 male, 20 to 25 years old, five-foot-seven, a
11 140 pounds wearing a black tank top and pants
12 pulled up to his knees.

13 "I want to go to the hospital
14 because I think I broke my left little finger
15 trying to get him out of our store. I want
16 to press charges against him for refusing to
17 leave and causing me to get hurt."

18 And then that is his initials,
19 again, right? That is his signature, 9/5/15.
20 And that is your signature, 9/5/15, right?

21 A Yes.

22 Q So you wrote that out for him?

23 A That is what he told me to
24 write. That is why there are corrections.

25 Q You wrote verbatim what he told

1 Tomesha Angelo

2 you?

3 A I try to. It in his words; I
4 didn't dictate it. I'm not a stenographer.

5 Q Isn't often that people say
6 things like, "You know, I don't feel like the
7 officers were inappropriate whatsoever."

8 A I would ask them, "Do you feel
9 if the officers were inappropriate?" And
10 that was his answer.

11 Q So you asked him that?

12 A Yes.

13 Q So it is in there because you
14 asked him that?

15 A Yes. It is common practice to
16 get depositions when an officer has what we
17 call an SRR or use of force.

18 Regardless, I mean, I have taken
19 depositions where they did not feel that the
20 officer was appropriate and still have to
21 write whatever they tell you.

22 Q So you said you wrote that, you
23 think before you watched the video?

24 A That was one of the first things
25 that I did.

1 Tomesha Angelo

2 Q So you showed up and took his
3 deposition, basically, because Zimmerman told
4 you to?

5 A Yes.

6 Q Did you speak to anybody else
7 before you took his deposition or just
8 Zimmerman?

9 A I don't know.

10 Q You don't remember?

11 A No.

12 Q So you might have, but you are
13 not sure?

14 A Do you mean officers or other
15 witnesses?

16 Q Did you speak with anyone, any
17 witnesses or officers before taking this
18 deposition?

19 A I don't know.

20 Q Do you remember who you spoke
21 with first, whether it was Algazall or his
22 coworker, Rafeq?

23 A No.

24 Q Do you know if you spoke to them
25 together?

1 Tomesha Angelo

2 A I do not believe I did.

3 Q

4 MR. SHIELDS: I want to put
5 that up one more time.

6 Q Do you see the deposition again
7 or do you see more than the deposition?

8 MR. SHIELDS: This is the
9 one we had previously, Exhibit
10 9.

11 Q He says at the beginning, "It
12 was around 11:20 that he came in." Right?

13 A That is what he told me, so it
14 doesn't match whatever I know, that is what I
15 put.

16 Q He said that, "He was in our
17 store for like 30 minutes." Right?

18 A That is what he said, yes.

19 Q Then he said that, he pushed him
20 out and he ran around the side and came back
21 in the front door, right?

22 A Yes.

23 Q But you didn't have Officer
24 Mentz collect any of that video, right?

25 A No.

1 Tomesha Angelo

2 Q That would have proved his
3 allegations?

4 A When it comes to the trespass,
5 it is not common practice for us to collect
6 video for a trespass.

7 Q So you are allowed to just
8 ignore this evidence that would have
9 corroborated his claim; is that what you are
10 saying?

11 A It is not common practice for us
12 to collect video for a trespass or a
13 violation. It is our technician that does
14 all the -- they did -- now it is not, but we
15 are not tying up technicians collecting video
16 for violations and stuff.

17 You know, for example, if there
18 was a petty larceny at a grocery store. If
19 they --

20 Q This will go a lot quicker if
21 you don't give me these examples that are not
22 responsive to my question. I am just trying
23 to get out of here before 5 o'clock for us
24 all, okay?

25 Listen to my question here:

1 Tomesha Angelo

2 There was video collected, right?

3 A Yes.

4 Q Here, Officer or Technician
5 Stephanie Mentz testified at the criminal
6 trial that you instructed her to only collect
7 video between 11:35 and 11:45. Does that
8 sound accurate to you?

9 A I have no idea what time, if I
10 told her a time. I did ask her to collect
11 video; I do not recall telling her a time.
12 It is common practice for us to collect video
13 for felonies and SRRs, but not trespassing
14 and --

15 Q So here, Stephanie was already
16 collecting video for the felony portion of
17 the crime, correct?

18 A Right, right.

19 Q So you didn't feel like she
20 needed to collect the video from earlier in
21 the incident, that was part and parcel of the
22 incident?

23 MR. CAMPOLIETO: Objection.

24 She answered the question.

25 MR. SHIELDS: Okay, John, no

1 Tomesha Angelo
2 she hasn't answered the
3 question. You can go ahead and
4 answer.

5 MR. CAMPOLIETO: She didn't
6 order her to do anything.

7 MR. SHIELDS: Okay.

8 Q Do you have any reason to
9 believe that Stephanie testified falsely at
10 the criminal trial?

11 A Falsely?

12 Q Do you have any reason to
13 believe that Stephanie testified falsely at
14 the criminal trial?

15 MR. CAMPOLIETO: Objection.

16 Q Is the answer "No"?

17 MR. CAMPOLIETO: The answer
18 is objection.

19 MR. SHIELDS: The answer is
20 not objection, John. She
21 answered the question and she
22 said "No."

23 MR. CAMPOLIETO: She has no
24 idea what Stephanie said. It is
25 her report.

1 Tomesha Angelo

2 MR. SHIELDS: John, I asked
3 her if she has any reason to
4 believe.

5 MR. CAMPOLIETO: Objection.

6 MR. SHIELDS: John, you need
7 to stop.

8 MR. CAMPOLIETO: No, you
9 need to stop with your
10 hypothetical questions.

11 MR. SHIELDS: It wasn't a
12 hypothetical. I asked her if
13 she testified falsely. Why
14 don't you prepare the witness
15 and show her the testimony,
16 John?

17 MR. CAMPOLIETO: She wasn't
18 there.

19 MR. SHIELDS: Let's go
20 back. The answer to my last
21 question was, "No." Correct?

22 THE COURT REPORTER: I don't
23 think she answered it.

24 Let me read back.

25 (The requested portion of

1 Tomesha Angelo

2 the record was read back by the
3 reporter.)

4 Q Do you have any reason to
5 believe that the technician, Stephanie Mentz,
6 would have testified falsely at the criminal
7 trial?

8 A No.

9 Q So here, would it have tied her
10 up to have simply collected fifteen minutes
11 more of video when she was already collecting
12 video?

13 A I don't know what that would
14 have done for her.

15 Q She could have easily just
16 downloaded fifteen more minutes of video,
17 correct?

18 A I don't know.

19 Q You don't know?

20 A No. You have to ask her that.

21 Q Did you speak with Stephanie
22 before or after you spoke with the witness
23 Dawan Algazall?

24 A After.

25 Q You spoke with Stephanie after

1 Tomesha Angelo

2 Algazall?

3 A Yes.

4 Q At the time that you ordered
5 Stephanie Mentz to download the video, you
6 knew what Dawan Algazall had told you: That
7 David Van had been in the store for thirty
8 minutes, ran out the back, came back around
9 to the front?

10 A Yes.

11 Can I clarify? You keep saying
12 the word "order." I don't have that
13 authority over her; I can only ask her to do
14 it. Only a sergeant can order her. It is
15 just a play on words, but you keep saying,
16 "order."

17 MR. SHIELDS: Okay. Give me
18 a second. The next exhibit is
19 going to be 10. It is going to
20 be the felony complaint that you
21 drafted for, Dawan Algazall.

22 (Dawan Algazall's Felony
23 Complaint was premarked as
24 Plaintiff's Exhibit 10 for
25 identification, as of this

1 Tomesha Angelo

2 date.)

3 Q It says, "Felony Complaint,
4 September 5, 2015. Investigator Tomesha
5 Angelo," correct?

6 A Yes.

7 Q It is your felony complaint,
8 because you signed it, investigator?

9 A It is an information.

10 Q The top, is that is correct,
11 right there?

12 A Yes. It is because I used a
13 template and didn't put -- it is an
14 information for -- I can't pronounce that.
15 Dawan Algazall's name.

16 Q Is there a difference between a
17 felony complaint and an information. An
18 information is a misdemeanor and a felony
19 complaint is for felonies?

20 A I believe so.

21 Q Here the charges were, it says,
22 "Misdemeanor, assault in the third degree and
23 violation of trespass contrary to the
24 provisions of sub-section 120.00 sub (2) and
25 140.10 of the penal law." Right?

1 Tomesha Angelo

2 A That is what it says.

3 Q So what is assault in the third
4 degree under sub-section 120.00 sub (2)?

5 A I do not have any penal law in
6 front of me.

7 Q Luckily, I do. So we can go
8 over that together.

9 When you charged him with those
10 two crimes, how did you decide that those
11 were the crimes that you were going to charge
12 him with?

13 A Based on the information that,
14 or the deposition that that gentleman gave
15 me.

16 Q Had you previously received any
17 training about when it is appropriate to
18 charge people with those various crimes?

19 A That's a broad question. Such
20 as what, I mean?

21 Q I mean those two specific
22 crimes, assault in the third degree, under
23 120.00 sub (2) or trespass?

24 A You have to be more specific.

25 (Copy of Mckinney Penal Law

1 Tomesha Angelo
2 120.00 was marked as Plaintiff's
3 Exhibit 11 for identification,
4 as of this date.)

5 (Copy of Mckinney Penal Law
6 15.05 was premarked as
7 Plaintiff's Exhibit 12 for
8 identification, as of this
9 date.)

10

11 Q This is assault in the third
12 degree, right? Is that what you see on your
13 screen?

14 Mckinny Penal Law 120, assault
15 in the third degree?

16 A Yes, that is what it says.

17 Q You charged him with sub-section
18 (2), so a person is guilty of assault in the
19 thirds degree when: Recklessly causes
20 physical injury to another person?

21 A Okay.

22 Q That is what you charged my
23 client with, right?

24 A Okay.

25 Q Do you remember that?

1 Tomesha Angelo

2 A That is what the information
3 says.

4 Q So before you charged him with
5 that, you would have looked up the penal law
6 and decided this is the section I am going to
7 charge with him?

8 A That is what I generally do.

9 Q So that is what you generally
10 do? You say, "Okay, let me see what the
11 allocations of the complaint are," and then
12 you go to the penal law and look it up?

13 A Yes.

14 Q You see what matches.

15 What does "recklessly" mean?

16 A That he didn't intend to break
17 the guy's finger, that is why I charged
18 recklessly.

19 Q What is the definition of
20 recklessly under the criminal law?

21 A I don't know. I don't have that
22 memorized.

23 Q How could you charge him with
24 reckless assault if you don't know the
25 definition of reckless?

1 Tomesha Angelo

2 A I, like I said, I went through
3 the penal law prior.

4 Q So you went through the penal
5 law and looked up the definition of reckless?

6 A I made sure that whatever I
7 choose was what I thought was proper and then
8 obviously if it was not, the information
9 would have been kicked back to me after
10 filing it and then I would have gotten a
11 chance to refile it had I done it
12 incorrectly.

13 Q So you filed it, you choose
14 reckless because it wasn't intentional; that
15 is what you are saying?

16 A That is not how I perceived it
17 in the deposition --

18 (Audio Complication.)

19 MR. CAMPOLIETO: Let's keep
20 the place and keep the question.

21 MR. SHIELDS: Off the
22 record.

23 (A discussion was held off
24 the record.)

25 (A brief recess was taken.)

1 Tomesha Angelo

2 MR. SHIELDS: Can you please
3 read back.

4 (The requested portion of
5 the record was read back by the
6 reporter.)

7 A So, obviously, it is based off
8 of the two depositions that the two males
9 gave me that I attached to the information
10 and I choose reckless because they did not go
11 to the level of intent.

12 Q So can you tell me what the
13 definition of reckless is?

14 A Not off the top of my head, no.

15 Q Do you think you looked that up
16 when you filed the charges or did you just
17 decide it is not to the level of intent?

18 A No. No. Like I said before, I
19 look things up to make sure I am doing them
20 correctly.

21 Q So let's look at it together.
22 Penal law 15.05, "The following definitions
23 are applicable to this chapter.
24 "Intentionally: A person acts intentionally
25 with respect to the result or to conduct

1 Tomesha Angelo
2 described by a statute finding an offense
3 when his conscious objective is to cause such
4 a result or to engage in such conduct."

5 So, here, you are saying that
6 based on what Mr. Algazall told you, that you
7 did not think it was intentional, correct?

8 A Correct.

9 Q We will go down to "Recklessly:
10 The person acts recklessly with respect to a
11 result or a circumstance described by a
12 statute in finding an offense when he is
13 aware of and consciously disregards
14 substantial and unjustifiable risk that such
15 a result will occur or that such
16 circumstances exist. The risk must be of
17 such nature and degree, that the disregard
18 thereof constitutes a gross deviation from
19 the standard of conduct that a reasonable
20 person would observe in this situation. The
21 person who creates such a risk but is unaware
22 thereof solely by reason of voluntary
23 intoxication also acts recklessly with
24 respect thereto."

25 Does that sound like what you

1 Tomesha Angelo

2 looked up prior to filing the charge?

3 A Yes.

4 Q So you read that definition, you
5 said, "That is it; he acted recklessly"?

6 A Yes.

7 Q So let's see, I am going to
8 switch back to Exhibit 11. Assault in the
9 second degree. So he recklessly causes
10 physical injury to another person, so you
11 think that based on what he told you that you
12 had probable cause to believe that my client
13 acted, that he was aware of and consciously
14 disregarded a substantial and unjustifiable
15 risk that Mr. Algazall would hurt his little
16 pinky finger?

17 A Yes.

18 Q Based on just what he told you?

19 A The two depositions combined.

20 Q When you say, "The two
21 depositions," what is the second one?

22 A I don't remember the dude's
23 name. Rafeq?

24 MR. CAMPOLIETO: No.

25 A No. Let me see.

1 Tomesha Angelo

2 MR. CAMPOLIETO: Ask if him
3 if you can review your report.

4 A I am trying to adjust because my
5 back is killing me.

6 Can I review my information.

7 Q Sure. Let me?

8 MR. CAMPOLIETO: I have it.

9 MR. SHIELDS: This is the
10 one that you are referring to
11 which would be Exhibit 6?

12 When you say information.

13 Oh, you mean that. Okay. That
14 is Exhibit 10.

15 Q Did you figure out the answer?

16 A Yes. If you look at the bottom
17 paragraph, it says I based it on the two.
18 I'm sorry. I cannot pronounce the names,
19 Dawan and Dwane depositions and I attached it
20 to this information.

21 Obviously, one was more
22 descriptive than the other and obviously I
23 included both.

24 Q Did you speak with Dwane
25 Maracelea?

1 Tomesha Angelo

2 A Yes. I think he is the guy that
3 I talked to inside the store. I didn't take
4 his deposition though.

5 Q What did Dwane Maraclea tell
6 you?

7 A It wasn't anything different
8 than what was written in the deposition.

9 Q So you wrote in the deposition
10 what he told you?

11 A I did not write his deposition;
12 I just read the deposition.

13 Q So you -- but you spoke to him?

14 A And it was consistent with what
15 he told me.

16 Q You said that you spoke with him
17 inside the store?

18 A Yes.

19 Q Did you speak with him before or
20 after you spoke with the store workers?

21 A You mean the guys I took the
22 deposition from?

23 Q Dawan Algazall and his coworker
24 Rafeq?

25 A I don't know about Rafeq but it

1 Tomesha Angelo

2 was definitely Algazall.

3 Q Was it before or after he gave
4 the deposition?

5 A That, I don't know.

6 Q How long after you spoke with
7 Dawan did you speak with Dwane?

8 A I don't know. I wasn't at the
9 scene that long, so I don't know.

10 Q Why did you speak with Dwane?

11 A I believe he was one of the
12 workers that was in the store when I walked
13 in so I wanted to know what he saw.

14 Q You think Dwane Maraclea was one
15 of the workers in the store?

16 A He was either in the store or
17 working in the store but I believe I talked
18 to him in the store but I am not positive on
19 that.

20 Q Did you mark down in your notes
21 anywhere that you spoke to Dwane?

22 A No.

23 Q You marked down in your notes
24 that you spoke to Rafeq, right?

25 A Yes.

1 Tomesha Angelo

2 Q Is there a reason that you wrote
3 down that you spoke with Rafeq but not Dwane?

4 A I don't know.

5 Q Did you speak with anyone else
6 who you didn't mark in your notes?

7 A Not that I know of.

8 Q But there is no way that you can
9 know since you didn't mark it down in your
10 notes?

11 A No. I guess no because I can
12 only make assumptions.

13 Q That that is why it is important
14 that you document everything accurately,
15 correct?

16 A I do document things accurately.
17 If I have additional information that
18 somebody has, usually when I document --
19 because I told you before, sometimes we
20 document or write their names down or
21 document or depose people depending on what
22 they have to say.

23 If this gentleman was deposed
24 and what he is telling me is the same thing,
25 I am not going to mark that; I also talked to

1 Tomesha Angelo
2 him when somebody else already did that. So
3 if it is new information or I am the only
4 person that talked to him then I will
5 document it.

6 MR. SHIELDS: Let's look at
7 his deposition.

8 (Deposition of Dwane
9 Maraclea was marked as
10 Plaintiff's Exhibit 13 for
11 identification, as of this
12 date.)

13 Q So, it says, "My name is Dwane
14 Maraclea. My date of birth is 10/11/89 and I
15 live at 539 South Avenue, number 304 in the
16 City of Rochester." Let's just see.

17 So, "September 4th, 2015,
18 approximately 11:30 p.m. I was outside at the
19 corner store located at 439 South Avenue
20 waiting to enter. I saw the police talking
21 to a black guy outside of the store telling
22 him to leave and that he was not welcome
23 inside. The officers gave the male a chance
24 to leave the location. While walking away
25 from the store, I saw the male get in one of

1 Tomesha Angelo

2 the officers faces approximately three to
3 five inches from the officer. The male then
4 stood in front of the store.

5 "The police officer told the
6 male to leave, but he refused to do so.
7 Officers then approached the male and told
8 him he was under arrest. The male began to
9 sway when the officers tried to place him in
10 handcuffs. The officers then took the male
11 to the ground. One of the officers appeared
12 to be injured once the man was brought to the
13 ground. He just laid there."

14 It doesn't look like there are
15 any initials here like there were on yours,
16 right?

17 A No.

18 Q "On his back while two officers
19 proceeded to handcuff the male. Two officers
20 then leaned the male up against a police car,
21 the male pushed backwards causing the skinny
22 officer to take the male to the ground. The
23 skinny officer then appeared to have injured
24 his shoulder.

25 "At this time, other officers

1 Tomesha Angelo

2 arrived and were able to control the male.

3 Officer Kephart approached me and asked if I
4 would give a deposition.

5 "The male repeatedly ignored
6 commands from the police to stop resisting.
7 The police commanded him to do so multiple
8 times."

9 Okay. Did I read that
10 accurately?

11 A Looks like it.

12 Q You didn't write this one,
13 right?

14 A No and I can't tell whether or
15 not he was a patron or a store person, so I
16 don't know what his title was.

17 Q But you talked to him at some
18 point that night?

19 A Yes.

20 Q You said you don't remember if
21 you talked to anybody else?

22 A No. I don't believe I talked to
23 anybody else.

24 Q Do you know how either you or
25 other officers choose to take depositions

1 Tomesha Angelo

2 from Dwane Maraclea and Dawan Algazall and
3 nobody else?

4 A So like I said before, we take
5 depositions when there are SRRs. So anybody
6 that witnessed the SRR, we're going to need
7 to take depositions from.

8 Q So you are suppose to take
9 depositions from everybody that witnessed the
10 SRR?

11 A We try. Many people that would
12 allow us to; some people say no.

13 Q Some people say no? So you
14 would ask every witness to SRR and say,
15 "Please, can you give a deposition?"

16 A Yes.

17 Q If people are resistant to
18 giving a deposition, what do you say to them?

19 A Okay. I am not going to force
20 somebody to give a deposition.

21 Q They did it voluntary?

22 A Yes.

23 Q Now, there were numerous other
24 witnesses there that night that witnessed the
25 SRR that didn't give depositions, right?

1 Tomesha Angelo

2 A I don't know of any other
3 witnesses that were there.

4 MR. SHIELDS: So this will
5 be Exhibit 14.

6 (Video, 11:41:10, was marked
7 as Plaintiff's Exhibit 14 for
8 identification, as of this
9 date.).

10 Q This is from inside the store.
11 This is camera two from inside the store. On
12 the camera it says 11:41:10 p.m., do you see
13 that?

14 A Yes.

15 Q I will play this very quick. It
16 is not too long, a minute and seven second
17 long video.

18 Do you see that boy walking
19 around? Do you remember talking to him?

20 A I don't remember what anybody
21 looks like.

22 Q If I represent to you that the
23 guy in the tank top is, Rafeq, do you
24 remember talking to him?

25 A I don't remember what they look

1 Tomesha Angelo

2 like.

3 Q So if you can watch the boy in
4 the black shirt real quick.

5 A Okay.

6 Q Do you have any idea what he is
7 looking at?

8 A No idea.

9 Q Do you remember what the inside
10 of the store looked like at all?

11 A No.

12 Q Do you remember where the camera
13 equipment was located inside the store?

14 A No, I don't remember.

15 Q Is it possible that he is
16 looking at a video showing the outside of the
17 store?

18 A No idea.

19 Q You never asked him?

20 A I don't ever remember, no.

21 Q You don't remember seeing if
22 there was a television screen up here
23 displaying what the security cameras showed?

24 A No. I don't remember the inside
25 of the store. I don't remember this video; I

1 Tomesha Angelo

2 don't remember it.

3 Q You never watched this video?

4 You don't remember?

5 A This does not look familiar.

6 Q But this guy was one of the

7 witnesses?

8 A I don't know what they looked

9 like.

10 Q We did see two people inside the

11 store, right?

12 A Yes.

13 MR. SHIELDS: So this will

14 be 15.

15 (Still shot from camera

16 three, 11:41:15, was marked as

17 Plaintiff's Exhibit 15 for

18 identification, as of this

19 date.)

20 Q This is going to be fifteen.

21 This is a still shot from camera three

22 outside of the store paused in the bottom

23 left one minute and eight seconds in this

24 video, and the time stamp in the top right is

25 11:41:15. I will try to zoom in so we can

1 Tomesha Angelo

2 see a little better here.

3 Do you remember watching camera
4 three from outside the store ever?

5 A I have never seen this video.

6 Q I will represent to you this is
7 one of the security camera videos from
8 outside of the store and that these are the
9 officers who had fallen onto the ground and
10 that is officer Drake standing.

11 Do you see what appears to be
12 other individuals standing around near the
13 sidewalk and in the street?

14 A Okay.

15 Q Can we count them together?
16 There appears to be one guy in the street on
17 the bicycle right here, right?

18 A Okay.

19 Q Another guy right here.

20 A Okay.

21 Q Two, three, four, and five,
22 right?

23 A Okay.

24 MR. SHIELDS: John, I see
25 her looking at the side. I

1 Tomesha Angelo
2 don't know if you are doing
3 anything or you can move back so
4 we can see you in the screen
5 too. John, I just -- that is
6 why I like it when we do it with
7 two screens so we can see both
8 of you.

9 Q You agree there are five
10 witnesses to the SRR, right?

11 A I don't know. I'm not going to
12 presume what they saw. I was not there. I
13 have no idea who they are or if they were
14 still there when I got there. I have no
15 idea.

16 Q But we can agree that we just
17 counted five people standing here aside from
18 what is depicted right here in the video?

19 A But I am not going to stipulate
20 that they witnessed what happened or if they
21 walked up after the impact.

22 Q Okay. We are just saying right
23 here in this still shot, we can look at
24 videos if you prefer that, but for right now
25 in Exhibit 15, we count, one, two, three,

1 Tomesha Angelo

2 four, five people standing there, right?

3 A Yes.

4 MR. SHIELDS: This will be
5 Exhibit 16.

6 (Video, 11:44:45, was marked
7 as Plaintiff's Exhibit 16 for
8 identification, as of this
9 date.)

10 Q Exhibit 16 is the same camera
11 angle, camera three a little later. Paused
12 it at five minutes twenty-one seconds into
13 the video, 11:44:45 and we will zoom in a
14 little bit here.

15 Can we count together? Bicycle
16 guy, white shirt guy and apparently two
17 others, so maybe four people standing right
18 here?

19 A Possibly. I don't know if they
20 are the same thing, people from the video or
21 different people.

22 Q Is it fair to say, one, two,
23 three, four people that you see?

24 A It looks like four; it could be
25 five. I don't know.

1 Tomesha Angelo

2 Q Does it look like these are
3 maybe officers walking over?

4 A I have no idea.

5 Q But there are two people on the
6 street?

7 A Yes, two people on the street.

8 Q You said earlier that you
9 drafted the information based on just the two
10 depositions, right, Algazall and Maraclea?

11 A Which information are you
12 talking about?

13 Q The one that you did.

14 A Yes.

15 Q That was before you watched the
16 video, right?

17 A Before I watched the video. I
18 look the depositions before I watched the
19 video is that what you are asking me?

20 Q Correct?

21 A Yes.

22 MR. SHIELDS: The next
23 Exhibit will 17. This is the
24 prosecution's witness list from
25 the criminal trial.

1 Tomesha Angelo

2 (Prosecution's witness list
3 was marked as Plaintiff's
4 Exhibit 17 for identification,
5 as of this date.)

6 Q So that says, "Dawan Algazall."
7 So this last, the required information that
8 the prosecution is required to disclose about
9 the witnesses' credibility issue, right?

10 So it says, "Dawan Algazall:
11 Pending DWI, E felony." Right? That is the
12 first thing there. And then that is from --
13 I guess, that doesn't give a date. It says
14 it was pending at the time of trial.

15 Second thing: Criminal mischief
16 in the 4th degree March 14th, 2016, right?

17 A Yes.

18 Q Below that: Driving a vehicle
19 not equipment with an ignition Interlock on
20 June 9th, 2015, right?

21 A Yes.

22 Q Driving while intoxicated on
23 April 5, 2012?

24 A Yes.

25 Q Attempted criminal possession of

1 Tomesha Angelo

2 a weapon in the 2nd degree, January 15th
3 2008, right?

4 A Yes.

5 Q Below that, Dawan Maraclea,
6 attempted burglary in the 3rd degree, July
7 8th, 2014.

8 MR. CAMPOLIETO: We can
9 stipulate to the document,
10 Elliot.

11 MR. SHIELDS: All right.
12 So.

13 Q The document that John just
14 stipulated in says that Dawan Maraclea was on
15 parole at the time of the incident, okay?

16 A Okay.

17 Q In your experience, is a
18 condition of parole often that the individual
19 has a curfew?

20 A Some do, some don't.

21 Q I will go ahead and tell you
22 Dwane Maraclea had a curfew of nine o'clock
23 p.m. on the night of the incident, and this
24 incident happened after eleven o'clock p.m.?

25 A I don't remember if that was the

1 Tomesha Angelo

2 exact time, but that sounds about right.

3 Q All the videos say eleven
4 something, right, 11:40?

5 A Right.

6 Q So it makes sense?

7 A Right.

8 Q Does that mean Dwane Maraclea
9 was violating his curfew?

10 MR. CAMPOLIETO: Objection.

11 A I wouldn't know.

12 Q Assuming what I told you is
13 true, that he had a curfew and it was nine
14 o'clock, then he would have been in violation
15 of his curfew, right?

16 MR. CAMPOLIETO: Objection.

17 MR. SHIELDS: You can
18 answer.

19 A So I have learned through the
20 years that sometimes, or a lot of times, they
21 don't violate people for curfews, so was that
22 against the rules is a better term, then yes,
23 but would they have violated him, more likely
24 no.

25 Q So when people take statements

1 Tomesha Angelo

2 of people for this incident, would they run
3 their name through the system?

4 A Not generally.

5 Q Sometimes they would?

6 A You would have to have a hunch
7 of whether or not you think they have a
8 warrant or something; it is not general
9 practice.

10 Q Do you think it is a coincidence
11 that the only two peoples whose depositions
12 were taken had pending criminal charges and
13 were on parol?

14 A No. We have a lot of people in
15 society that have pending charges, various
16 charges.

17 Q So we counted five people at
18 least, maybe six or seven who witnessed the
19 SRR and were at the scene after the incident
20 but --

21 A Wait. How do you know they were
22 at the scene after the incident?

23 MR. CAMPOLIETO: Let me
24 object. Objection, you can
25 answer.

1 Tomesha Angelo

2 A I don't know that they were at
3 the scene after the fact, and I don't know if
4 officers asked them if they were before going
5 to give a deposition. They could have said
6 no. We're not going to force it.

7 Q That is the whole point of the
8 question, right?

9 You see these folks standing
10 over here, right?

11 A Okay.

12 Q Referring to Exhibit 16, do you
13 see an officer also approach the guy standing
14 across the street, right?

15 A I don't know if those are
16 officers, I really don't. They look like
17 blobs to me. They actually look like snow
18 suits to me to be honest with you. I don't
19 know what they are.

20 If you are going to tell me
21 those are officers, okay, cool. I can't tell
22 what they are from this picture.

23 Q We can watch the video, but you
24 agree with me, that the only two people who
25 gave depositions both had pending criminal

1 Tomesha Angelo

2 charges or were on parol, correct?

3 A That is what you are telling me.

4 I never looked into that. If your

5 information is correct, than cool, the two

6 people that were willing to give depositions.

7 I don't know who else was asked. I don't

8 know who else was willing. When I got to the

9 scene, I didn't see anybody else.

10 Q You were told by Zimmerman to
11 take the deposition of Algazall?

12 A Yes.

13 Q Is that right?

14 A Yes.

15 Q Do you know who told Kephart to
16 take Maraclea's deposition?

17 A You mean Dwane?

18 Q Dwane Maraclea?

19 A No, I do not.

20 Q Do you think it was probably
21 Zimmerman?

22 A I have no idea.

23 Q Zimmerman was the officer in
24 charge on the scene?

25 A He was the sergeant; yes, he

1 Tomesha Angelo

2 would be. LaFave was there, I think, and
3 outranked him at the time. I can't remember
4 what rank everybody was. I know Zimmerman
5 was a sergeant. I don't remember what LaFave
6 was.

7 Q So whoever the highest ranking
8 officer on the scene was, that was the person
9 in charge, right?

10 A Yes.

11 Q That is either Zimmerman or
12 LaFave?

13 A Yes.

14 Q What if they were the same rank
15 at the time?

16 A Then, well, they are in the same
17 section. I don't know. One of them would
18 decide who was going to be primary because it
19 involved -- it would involve both 4th Platoon
20 and the 1st Platoon so the two of them would
21 have to decide between the two of them who
22 was going to.

23 Q One of those two were in charge?

24 A Yes.

25 Q And the person in charge is

1 Tomesha Angelo

2 termed the primary officer?

3 A Yes.

4 (Grand Jury Referral was
5 marked as Plaintiff's Exhibit 18
6 for identification, as of this
7 date.)

8 Q So I put up on the screen, can
9 you see the Grand Jury Referral?

10 A Yes.

11 Q That will be Exhibit 18. My
12 question about this document is: I see one
13 date right here, date of the crime, right?

14 A Okay.

15 Q The arrest date. Would this
16 document contain the date that you completed
17 it?

18 A No.

19 Q Do you remember when you did
20 this Grand Jury Referral?

21 A I made the Grand Jury Referral,
22 yes. So, I don't know when I completed it,
23 but I have to hand it into a boss to it have
24 approved and then it has to get scanned and
25 then sent over and signed in or sent over to

1 Tomesha Angelo

2 the District Attorney's Office.

3 This doesn't get handed in right
4 away generally. The informations do or the
5 felony complaints do, but this usually
6 doesn't get handed in right away.

7 Q My question is: How would we
8 determine when this was handed in?

9 A I don't know.

10 Q Is there any way to either --
11 you said it gets scanned in, right?

12 A Yes.

13 Q When you turn it into the RPD,
14 to your boss, do you do that physically or do
15 you send it in an e-mail?

16 A No, it was physically.

17 Q When it gets sent to the
18 District Attorney's Office is that physically
19 or in an e-mail?

20 A Physically, because the original
21 depositions would have been in it.

22 Q Would you give it at the time
23 that the grand jury presentation takes place
24 or would you do it closer to when the arrest
25 happened?

1 Tomesha Angelo

2 A I don't know. I mean, I know it
3 gets sent over to that office. How soon it
4 goes through the chain to get over there, I
5 don't know. I don't know if they time stamp
6 it when they received it. I have no idea.

7 Q I am going to scroll through it.
8 So the one thing, it says, Officer's
9 Handwritten Notes. So there were no hand
10 written notes included in this, right?

11 A Mine were. The box just wasn't
12 checked.

13 Q So you didn't check the box,
14 that was a mistake?

15 A Yes.

16 Q Are there any other mistakes on
17 this report?

18 A Not that I am aware of.

19 Q Are there any other mistakes in
20 any of the other reports that you filled out
21 as part of this case?

22 A Not that I am aware of.

23 Q But there could be?

24 A I am human.

25 Q Do you know when this case was

1 Tomesha Angelo

2 presented to the grand jury?

3 A No.

4 Q Well, we can tell you. So the
5 date of the incident was September 4th, 2015,
6 right?

7 A September 4th, 2015, okay.

8 MR. SHIELDS: The grand jury
9 testimony, People of the State
10 of New York.

11 (Grand Jury Testimony was
12 marked as Plaintiff's Exhibit 19
13 for identification, as of this
14 date.)

15 Q People of the State of New York,
16 against David Van. Charges: Assault in the
17 2nd degree. Presented April 4th, 8th and
18 9th, 2016.

19 Do you know why there was such a
20 long time between the incident on September
21 4th, 2015 and the grand jury presentation in
22 April 2016?

23 A No idea. That is something you
24 have to ask the District Attorney's Office.

25 Q Do you know what happened to my

1 Tomesha Angelo

2 client after this incident?

3 A No idea.

4 Q Did you know he was put into

5 soloditary confinement for one month?

6 A No. I don't know anything about

7 what happened to your client or the trial.

8 Q Are you aware that he spent four

9 months at the Rochester Psychiatric Center

10 incarcerated there after he was deemed

11 incompetent to stand trial?

12 A No.

13 Q Do you think that might be the

14 reason it took so long until he was finally

15 deemed to stand trial?

16 MR. CAMPOLIETO: Objection.

17 A I have no idea. The only person

18 that can answer that question is the District

19 Attorney. I have no idea.

20 Q So in all of your years of

21 experience, you are unaware of whether or not

22 there can be an arraignment or grand jury

23 proceeding if the person is deemed

24 incompetent to stand trial?

25 A I do not know of that. It is

1 Tomesha Angelo

2 not something I deal with.

3 MR. CAMPOLIETO: Objection.

4 Objection.

5 Q Between my client's arrest and
6 the grand jury presentation, are you aware
7 that the store, and I think it is called an
8 A&M Market, A&M South Market was shutdown
9 because the owner was arrested for food stamp
10 fraud?

11 A No, I did not.

12 Q You are unaware of?

13 A That, no.

14 MR. SHIELDS: This is
15 Exhibit 20. The Office of the
16 Inspector General dated October
17 6, 2015.

18 (Article dated 10/16/15, the
19 Office of the Inspector General
20 dated October 6, 2015 was marked
21 as Plaintiff's Exhibit 20 for
22 identification, as of this
23 date.)

24

25 MR. CAMPOLIETO: I object to

1 Tomesha Angelo
2 the exhibit. I object to the
3 question. This is really
4 irrelevant to this witness,
5 Elliot.

6 MR. SHIELDS: Okay. John, I
7 am going to ask a couple of
8 questions.

9 MR. CAMPOLIETO: I am
10 objecting to the exhibit. You
11 can ask her questions.

12 MR. SHIELDS: You can object
13 all you want, John.

14 MR. CAMPOLIETO: I did.
15 Before you ask the question, are
16 we going to be here until five,
17 5:30?

18 MR. SHIELDS: We are not
19 going to be here until 5:30.

20 MR. CAMPOLIETO: My witness
21 is tired and hungry and she is
22 not wearing well because this
23 has gone on so long. She is not
24 use to this.

25 MR. SHIELDS: I have seven

1 Tomesha Angelo
2 hours to ask questions. I told
3 you earlier I don't plan on
4 going long, we're almost done,
5 so. Let me ask my questions and
6 we'll get out of here soon.

7 MR. CAMPOLIETO: But this
8 document has nothing to do with
9 the witness here.

10 MR. SHIELDS: You can't say
11 that.

12 MR. CAMPOLIETO: I can. She
13 is asking for a lunch break. It
14 is now three o'clock.

15 MR. SHIELDS: You took two
16 breaks.

17 MR. CAMPOLIETO: I took ten
18 minute breaks.

19 MR. SHIELDS: I am almost
20 done. I have two more exhibits,
21 okay?

22 THE WITNESS: Okay.

23 MR. SHIELDS: I apologize.
24 We are almost done.

25 Q You said earlier that you

1 Tomesha Angelo

2 gathered all the documents in the case as
3 part of your role as the investigator, right?

4 A I was helping out. Yes, so I
5 put them all together in a package, yes.

6 Q You were the case coordinator,
7 right?

8 A Yes. The case coordinator just
9 means I am the Grand Jury Referral. There
10 are a list of documents we have to get
11 together. I get them all together in a nice
12 little package and handed them in. That is
13 what the case coordinator means; it was not
14 the lead investigator on this.

15 Q Either you or anyone else, are
16 you aware of what happened with the store
17 owners getting arrested for food stamp fraud?

18 A No.

19 Q That might have been something
20 that could have played an impact in the whole
21 set of circumstances that lead to my client
22 being arrested?

23 A I have no idea. Did this happen
24 before or after your client was arrested?

25 Q It says October 16th, 2015, and

1 Tomesha Angelo

2 it says it is part of an ongoing
3 investigation, so at the time that my client
4 was arrested, what this article says is --

5 A This is from the New York State
6 Inspector General, we don't talk to them. We
7 wouldn't know they had this investigation
8 going on.

9 Q Okay. So after it was
10 publically announced that at the time my
11 client was arrested for this alleged dispute,
12 right?

13 A Okay.

14 Q What this is saying is that they
15 had an ongoing criminal fraud where they were
16 ripping people off from their EBT cards?

17 MR. CAMPOLIETO: Objection.

18 Q So you don't think it would have
19 been a pertinent part of the case to gather
20 this information and turn it over to the
21 District Attorney?

22 A No. Why? This doesn't have
23 anything to do with my case.

24 Q So if my client's allegations
25 are that he went to pay for something and he

1 Tomesha Angelo

2 did not get the proper amount of change from
3 the store owner and that the store owner had
4 repeatedly robbed him when he tried to pay
5 with his EBT card?

6 MR. CAMPOLIETO: Objection.

7 A That is not what I was there
8 for. I was there because the two officers
9 were injured.

10 Q And you were there because you
11 wrote an information for Dawan Algazall?

12 A Right.

13 Q Who claimed that my client was
14 trespassing and refused to leave the store,
15 right?

16 A Right, but it doesn't say
17 anything about food stamps or not getting the
18 correct change. That is not -- he didn't
19 have ID for beer. Why would I know anything
20 that this would be connected to?

21 Q Did you ever figure out why my
22 client was alledgedly refusing to leave the
23 store?

24 A I don't recall that and it is
25 not in the depositions.

1 Tomesha Angelo

2 Q So would it have been important
3 to maybe speak with him to figure out his
4 side of the story, why he says that he wasn't
5 leaving the store?

6 A He was in no condition to talk
7 to that night.

8 Q Because as we looked at him
9 earlier, his eyes were closed?

10 A No because he was extremely
11 combative in the back of the car. I saw that
12 with my own eyes. He was so combative, he
13 was making the car shake.

14 Q Despite the fact that none of
15 the videos show that?

16 A I am telling you that is what
17 happened. I was standing three feet from the
18 car.

19 Q So, just to wrap this up: You
20 never became aware at any point of the owner
21 of the store getting arrest for food stamp
22 fraud, right?

23 A No.

24 Q Then, one more on that. This
25 article is dated April 15th, 2016, "Two

1 Tomesha Angelo

2 Rochester grocers pled guilty to food stamp
3 fraud."

4 Would that be the same month
5 that the Grand Jury Presentation took place,
6 April 2016?

7 A I don't know. I wasn't at grand
8 jury.

9 Q I mean, based on what the
10 document we put up before, April 4th, 8th and
11 9th, 2016, right?

12 A Okay.

13 Q And then that is the same months
14 as this article, April 15, 2015, right?

15 A This is all stuff you are
16 telling me after the fact. I didn't know
17 when grand jury was. I didn't watch the news
18 and I didn't see this nor would I put
19 two-and-two together.

20 Q I am just asking you questions.
21 I'm not accusing you of anything. You would
22 agree with me that this article which says
23 that the store owner pled guilty to food
24 stamp fraud, that happened in the same month
25 that the case was presented to the grand

1 Tomesha Angelo

2 jury, correct?

3 A Those are not the same names I
4 dealt with.

5
6 Q Exhibit 20, an article dated
7 October 16, 2015 for the New York State
8 Office of the Inspector General, that is 20
9 and it says here, in this paragraph on page
10 1: Arrested and arraigned today was Anile
11 Sultan, 41 of Penfield, owner and operator of
12 S&M Minimart at 439 South Avenue.

13 S&M Minimart was the same
14 location where this incident that is part of
15 this lawsuit took place; is that right?

16 A That wasn't the name of the
17 business. It has nothing to do with the
18 people.

19 Q I am asking you about the name
20 of the business, S&M Minimart, right, 439
21 South Avenue?

22 A No, A&D South Market or
23 something. It wasn't even the same name. It
24 could have changed owners by then.

25 Q This is one month later, right?

1 Tomesha Angelo

2 A This is in April?

3 Q The owner was arrested on April
4 16th, 2015, that's the date of this article,
5 okay?

6 Let me ask the question: So
7 this is the Grand Jury Referral, right?

8 A Okay.

9 Q This says A&Z {sic} South Market
10 439 South Avenue, right?

11 A Yes.

12 Q So, that is the location of the
13 incident?

14 A Yes.

15 Q 439 South Avenue, is the same
16 address as this article, right, 439 South
17 Avenue?

18 A Okay.

19 Q So you would agree with me they
20 are talking about the same location, correct?

21 A Same physical location, but not
22 listed at the same store and it is not
23 listing the same dude.

24 Q Do you remember a different
25 store located at 439 South Avenue?

1 Tomesha Angelo

2 A You have to understand, in the
3 City, a lot of businesses change hands like
4 crazy so it is not like one owner stays
5 there. Same with apartment buildings, they
6 change hands constantly. That is not
7 something new. That wouldn't be surprising.

8 Q So you think sometime between
9 the incident in September and October 16th
10 2015, the store changed hands?

11 A Yes, it is possible. I have had
12 it done before with apartment buildings.

13 Q I might have asked you this
14 before, I am tying up loose ends: When you
15 first arrived at the scene, you said my
16 client was in the back of the car or was he
17 outside of the car?

18 A Inside the car.

19 Q Did you ever send any e-mails as
20 part of this case?

21 A I don't think so. I wouldn't
22 see why or who I would e-mail.

23 Q I asked you earlier how you
24 submitted the grand jury referral, you said
25 that was physically?

1 Tomesha Angelo

2 A Yes.

3 Q Did you ever make any phone
4 calls or send any text messages on the site
5 of incident about the incident?

6 A Like I said before, I don't know
7 if I specifically talked to somebody at the
8 hospital to get injuries or if Sarge did.

9 Q But you didn't go to the
10 hospital, right?

11 A I don't ever recall going to the
12 hospital.

13 Q When you submit the grand jury
14 referral, I think you said earlier that you
15 just do that physically? You didn't speak to
16 the ADA assigned to this case?

17 A No. I have no idea who handled
18 this case, so when I submit it, it gets
19 submitted to Sarge and then Sarge will sign
20 off and scan it or he will have the
21 coordinator scan it and it gets sent off to
22 the District Attorney's office in the mail or
23 the interdepartmental mail, but then I never
24 see it after that.

25 Q Sometimes will the Assistant

1 Tomesha Angelo

2 District Attorney call you up because you are
3 the case coordinator?

4 A Yes.

5 Q But that didn't happen here, to
6 your recollection?

7 A No.

8 MR. SHIELDS: John, what I
9 want to do, I think that is all
10 my questions for today. I know
11 everyone is hungry and I want to
12 do the same thing as yesterday.

13 I called for production of
14 her training records. I want to
15 discuss that with you and look
16 at those and get back to you
17 about whether I might need to
18 ask her a couple of questions
19 about that stuff.

20 MR. CAMPOLIETO: We'll have
21 to figure out a better way, but
22 that is fine. Trust me, you are
23 not going to come back. If we
24 can do it by written deposition
25 we'll try that. Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

That is fine, Elliot.

MR. SHIELDS: Thank you,
investigator, for your time.

(TIME NOTED: 2:51 p.m.)

TOMESHA ANGELO

Subscribed and sworn to
before me this _____ day
of _____, 2022.

NOTARY PUBLIC

INDEX TO TESTIMONY

WITNESS	EXAMINATION BY	PAGE
Tomesha Angelo	Mr. Shields	5

INDEX TO EXHIBITS

PLAINTIFF'S

EXHIBITS	DESCRIPTION	PAGE
1	Handwritten notes	89
2	still shot from a news clip	96
3	Photograph	99
4	Photograph	101
5	Photograph	107
6	Rochester Police Department Action Report	111
7	Officer Drake's Felony Complaint	118
8	Officer Kester's Felony Complaint	123
9	Deposition of Dawan Algazall	129
10	Dawan Algazall's Felony Complaint	142
11	Copy of Mckinney Penal Law	144
12	Copy of Mckinney Penal Law 15.05	145
13	Deposition of Dwane Maraclea	155
14	Video, 11:41:10	159
15	Still shot, 11:41:15	161
16	Video, 11:44:45	164
17	Prosecution Witness List	166
18	Grand Jury Referral	173
19	Grand Jury Testimony	176
20	The Office of the Inspector General dated October 6, 2015	178
	Article dated 10/16/15	

1

2 TO BE PRODUCED/INSERTED

3 DESCRIPTION

PAGE

Any notes taken

88

4 Training records

190

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, ROBYN LEHRMANN, a Shorthand Reporter
and Notary Public of the State of New York,
do hereby certify:

That, TOMESHA ANGELO, the witness whose
examination is hereinbefore set forth, was
duly sworn, and that such examination is a
true record of the testimony given by such
witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am no way interested
in the outcome of this matter.



April 16, 2022

ROBYN LEHRMANN

DATE